

**HEARING OFFICER, CAREER SERVICE BOARD, CITY AND COUNTY OF DENVER,
STATE OF COLORADO**

Appeal No. 251-00

FINDINGS AND ORDER

IN THE MATTER OF THE APPEAL OF:

LORI PADILLA, Appellant,

Agency: DENVER DEPARTMENT OF HUMAN SERVICES, AND THE CITY AND
COUNTY OF DENVER, a municipal corporation.

INTRODUCTION

For purposes of these Findings and Order, Lori Padilla shall be referred to as "Appellant." The Department of Human Services shall be referred to as the "Department." The City and County of Denver shall be referred to as the "City". The Rules of the Career Service Authority shall be abbreviated as "CSR" with a corresponding numerical citation.

A hearing on this appeal was held on March 15, 2001, before Robin R. Rossenfeld, Hearing Officer for the Career Service Board. Appellant was present and was represented by Richard Sanchez, AFSCME. Neils Loechell, Esq., Assistant City Attorney, represented the Department with Harry Spikes appearing as the advisory witness.

The Hearing Officer has considered the following evidence in this decision:

The following witnesses were called by and testified on behalf of the Department:

Harry Spikes, Tammie Raetz, Caroline Hetzel, Dr. Columbus Veasey, Jr.

The following witnesses were called by and testified on behalf of the Appellant:

Appellant

The following exhibits were offered and admitted into evidence on behalf of the Agency:

Exhibits 1, 2, 3, 4

The following exhibits were offered and admitted into evidence on behalf of the Appellant:

None

The following exhibits were admitted into evidence by stipulation:

Exhibits 1, 2, 3, 4

The following exhibits were offered but not admitted into evidence and therefore not considered in this decision:

None

NATURE OF APPEAL

Appellant is appealing her termination for alleged violations of CSR §§16-50 A. 1), 3) and 20) and 16-51 A. 2), 5) and 6) and is requesting reinstatement and return of the lost pay and benefits.

ISSUES ON APPEAL

Whether Appellant violated CSR §§16-50 A. 1), 3) and 20) and 16-51 A. 2), 5) and 6)?

Whether the Agency's action terminating Appellant from her employment for the alleged violations of CSR §§16-50 A. 1), 3), and 20) and 16-51 A. 2), 5) and 6) was arbitrary and capricious or otherwise contrary to rule or law?

If Appellant violated any provisions of CSR §§16-50 and 16-51, what is the appropriate sanction?

PRELIMINARY JURISDICTIONAL MATTERS

None.

FINDINGS OF FACT

1. Appellant was employed by the Department of Human Services in the Family and Children's Division as a Senior Data Entry Clerk during the relevant time period. She had access to security levels on the computer system that allowed her access into the Child Welfare eligibility and payment systems.

2. During the relevant period, Appellant was receiving day care assistance and food stamps.

3. During the relevant period, Appellant's four children, Ron, Jordan, Lance, and Ciara Mestas, were living in her home.

4. Appellant went out on Family Medical Leave on June 26, 2000. On July 12, 2000, she resigned from the Department so she could take another job. Appellant decided not to take the new job. On August 20, she asked Dr. Veasey to rescind her resignation, which Dr. Veasey did.

5. On August 10, 2000, an anonymous phone call came into the Department's complaint line. The caller stated that Appellant owned a 1999 or 2000 Chrysler Stratus. The caller alleged that Appellant received day care assistance but that the children were not being cared for by the stated provider (Blanca Alvarado, a former DHS employee). The

caller stated that the monies from day care were split between Appellant and the provider. (Exhibit 3, p. 8)

6. Harry Spikes, an investigator for the Department, was assigned to investigate the complaint on August 16, 2000.

7. Mr. Spikes met with a representative for the Department's Day Care Payments Unit, who disclosed that Appellant was receiving day care assistance for her son Ron Mestas, but not for her other three children. Appellant listed Laura Herrera as the day care provider. Ms. Herrera's address was listed as 2913 W. College Avenue, Denver. (Exhibit 3, pp. 44-47) Ms. Herrera does not actually live at that address. It is Appellant's address.

8. Mr. Spikes talked to Ms. Herrera twice. She told him that she had never approved or authorized anyone to list her as a day care provider. Ms. Herrera admitted that she had filed her name on an application as a day care provider since she had intended to provide day care services at one time.

9. On August 17, Mr. Spikes met with Doreen Bridgewater, a Department Payroll Clerk. Ms. Bridgewater supplied Mr. Spikes copies of payroll information showing Appellant received paychecks on July 14, August 4, and August 14, 2000, which covered the time period for which she was out on FMLA leave. Appellant received these paychecks because other employees donated the time to her.

10. Appellant received payments for child care even though she was not entitled to them while she was on FMLA leave. (Exhibit 3, pp.44-45)

11. Also on August 17, Mr. Spikes went to Appellant's house, where he saw a Dodge Stratus, license plate number 622AHW, parked in front. Mr. Spikes checked the license plate with the Department of Motor Vehicles. DMV records showed that the license plate was registered to Eric Villegas, 3285 S. Bryant Street, # 103, Denver, and was for a 1990 Toyota.

12. On August 18, Mr. Spikes attempted to identify the owner of the Dodge Stratus through the vehicle identification number. The DMV had no record for the vehicle under the VIN.

13. Food Stamps has a resource limitation around \$4,000 or \$4,700. Acknowledged ownership of the Dodge Stratus would have made Appellant ineligible for Food Stamps.

14. On August 23, Mr. Spikes made his initial contact with Appellant at her home. Appellant was advised of her right against self-incrimination and was given an explanation of the allegations. Mr. Spikes then interviewed Appellant and asked her to write a statement, which she did (Exhibit 3, pp. 13-19). Because she wanted to clarify something, Appellant actually produced a second written statement on August 23 (Exhibit 3, p. 20)

15. Appellant admitted that she was the owner of the 1999 Dodge Stratus. She provided a slip showing it was purchased on January 18, 2000. She said she had no other registration information for the vehicle since she had never registered it because she was

unable to pay for license plates.

16. Appellant stated that she might have inadvertently neglected to include the vehicle information on her application for Food Stamp Benefits when she met with the eligibility technician on July 25, 2000. She claimed that she had included the information on her original application, which was subsequently misplaced by the Department, and that the intake technician never asked her about a vehicle during the July interview.

17. Appellant acknowledged that she received payroll checks on July 14 and August 4 and 14. She claimed that she told the eligibility clerk that she was anticipating a pay check for the leave donated to her by fellow Department employees.

18. Appellant stated that the monies she shared from the day care payments were not with another Department employee, Blanca Alvarado, but with Ms. Alvarado's mother, also named Blanca Alvarado. Appellant stated that Ms. Alvarado, Sr., provided day care services approximately twelve to eighteen months prior to August 23, 2000.

19. According to Appellant's statements, after Ms. Alvarado, Sr., stopped providing day care services, Laura Herrera (who also provided day care for other children besides Appellant's) provided day care services for one or two months. Because Appellant's children did not like Ms. Herrera, Appellant then used Jean Sisneros as a day care provider. At the time of the interview with Mr. Spikes, Ms. Sisneros was still Appellant's day care provider. Appellant explained that, although Ms. Herrera continued to receive the day care assistance payments, Ms. Herrera gave the portion of the money she received that was for allocated for Ron Mestas to Ms. Sisneros.

20. Appellant claimed in her initial statement that she did not intentionally mislead or provide false information to the Department during her application for Food Stamp benefits or for day care assistance for her son, Ron Mestas.

21. Appellant gave another written statement on October 4, in which she listed the six or more persons who had been providing day care for her children. For sometime around 1996, the day care provider was a Vivian (no last name provided). Then Brenda Mestas, Appellant's sister-in-law, was listed as the day care provider. Ms. Mestas would receive the checks and distribute the money among the other family members who were actually providing the day care. Appellant wrote that she kept Ms. Mestas as the day care provider because she owed Appellant money from a lawsuit. Appellant wrote that she did this because it was a difficult time for her and it was much too complicated to keep changing the names of the day care providers. For a short time in 1997, Appellant's sister, Roberta Turner, was providing day care and receiving the checks. Then Appellant changed to Laura Herrera in 1998. Then Appellant actually started using Vicky Padilla as her provider for at least one of her children. Appellant stated that she could not provide Ms. Padilla's name because Ms. Padilla was on SSI and could lose her benefits. At the same time that Ms. Padilla was providing day care for Appellant's daughter, Jean Sisneros was providing it for Appellant's three boys. (Exhibit 3, pp. 35-41)

22. On October 6, Appellant was placed on investigatory leave and her computer access was taken away.

23. Appellant gave several written statements on October 10. In one, she wrote:

I am willing to repay to the Dept. of Human Services any monies I received I was not intitled (sic) to receive.

If there is a consideration of arrest in this situation regarding Day Care payments, I would prefer to be notified pryer (sic) to arrest so that I can turn myself in voluntarily as I need to make arrangements for the care of my Children, and do not want them in the custody of the Dept. of Human Services.

(Exhibit 3, p. 29)

Appellant was not told to put the second paragraph into her statement. She indicated that she wanted the information to be part of the record and added it on her own.

24. Appellant also admitted in another of the October 10 statements that she got checks from the Department in the name of Brenda Mestas as day care provider and that the money from the checks was given to Victoria Padilla for her provision of day care services. (Exhibit 3, p. 30) In what appears to be the part of the same statement, Appellant admitted that Laura Herrera did not provide day care services and that the checks were cashed by Appellant and that the money was then distributed to Blanca Alvarado and others for their services. (Exhibit 3, p. 32) Appellant admitted that Jean Sisneros was actually her current day care provider and that she was also paid from the monies received for Laurie Herrera as pay care provider. (Exhibit 3, p. 33) Finally, Appellant recanted the allegations she made to Tammie Raatz that others in the Department were doing the same thing as she with regard to not listing the actual day care provider. (Exhibit 3, p. 34)

25. A few days before Appellant was placed on investigatory leave, she was began to work with Tammie Raatz. Ms. Raatz testified about a meeting Appellant had with her on October 4. She indicated to Ms. Raatz that she feared being escorted out of the building in front of her friends and that she wanted to be allowed to have either Ms. Raatz or Jude Ligouri walk her out of the building rather than being escorted out by security. She also indicated to Ms. Raatz that she had been using various relatives to care for her children, that she had listed her sister-in-law as her day care provider and that her sister-in-law then distributed the money to the other relatives. Appellant also said that her sister-in-law was mad about some other family issues and that she was probably the one who had turned her in. She indicated to Ms. Raatz that the day care issue had been going on for a number of years and that she knew that she would eventually get caught. She indicated that her day care eligibility technician was aware that she was not using the provider listed on the form and that she had no problem with it. She stated that others in the Department did the same thing and that one employee had been doing it for over ten years. She said that she had talked to her ex-husband and indicated that she might be going to jail and that he would have to take care of the children. Appellant said that she knew what she did was wrong, but that she did not use the money for herself. She told Ms. Raatz that if she had really wanted to commit fraud, she could have done it easily in her previous position by creating a fake provider and collecting the money. Ms. Raatz also testified that Appellant never expressed remorse; she was only concerned that she not be escorted out of the building by law enforcement.

26. Caroline Hetzel, an Administrative Review Coordinator at the Department,

testified that, on some unspecified date (in approximately October 1999), she noticed that Tiffany Janello, the former Department employee, was sitting at her desk and "stewing" about whether she should do something for "her friend." Ms. Hetzel asked her what she meant, to which Ms. Janello replied that it was "not really that big of a deal; Lori just wants me to tell someone I'm someone else." Ms. Hetzel testified that she then saw Appellant show Ms. Janello how to use her cell phone and gave her a woman's name. The cell phone rang and Ms. Janello identified herself as the person whose name Appellant had given her. Ms. Hetzel could not relate any more information about the content of the conversation.

27. During her testimony at this hearing, Appellant admitted that she signed Laurie Herrera's name on the Child Care Attendance and Billing Forms (Exhibit 3, pp 44-47) where the provider is required to certify her compliance with the applicable laws and the accuracy of the records. She stated that she had Ms. Herrera's permission to use her name. Appellant claimed that she did not know that signing the certification was wrong; she believed someone else would verify it. She subsequently admitted that she knew that signing someone else's name was "improper."

28. Appellant testified that she had not accessed either the Food Stamps or child care systems on the computer.

29. Appellant testified that she reported the ownership of the Dodge Stratus on her original Food Stamps application and that she did not know that her ownership of the car would make her ineligible for Food Stamps.

30. Appellant admitted that the license plates on her car belonged to someone else and that the car was actually unlicensed and unregistered.

31. Appellant admitted that Vicky Padilla was providing day care for her children and that she could not list her as the provider because Ms. Padilla would lose her SSI benefits.

32. Appellant testified that she was using Ms. Janello as a reference for her car and that was the conversation Mr. Hetzel overheard. She stated that the conversation had nothing to do with day care providers.

33. Appellant testified that Jean Sisneros and her daughter had been providing day care for her for almost two years. She stated that she could not name Ms. Sisneros as her day care provider because Ms. Sisneros would have been penalized.

34. Appellant testified that she never used her position to get money and that her fraud was not committed as an employee. She felt she should only be penalized as a "client" of the Department. According to her, if she worked for someone else and did the things she admitted to, she would not have been fired from her employment. She claimed that she did her best not to be dishonest.

35. Appellant admitted that she was not honest about her day care providers but that she was going through problems and was trying to straighten out her life.

36. Appellant admitted that she has not paid any of the money back for child care while she was out on Family Medical Leave for stress in June and July 2000. She

testified that her doctor told her to rest and that is why she used a child care provider even when she was not working. She stated that the reason she has not paid the money back is that no one at the Department has asked her to do so.

37. The Notification that disciplinary action was being contemplated was hand-delivered to Appellant on October 24, 2000. Appellant was informed that she was being charged with violations of CSR §§16-50 A. 1), 3), 20) and 16-51 A. 2), 5) and 6). Fifteen different instances of misconduct were specified in the letter. A copy of the list of documents in the investigatory file was also provided. (Exhibit 3, pp. 1-8)

38. The predisciplinary meeting was conducted by Dr. Columbus Veasey, Jr., Director of the Department, on November 3, 2000. Appellant was present and accompanied by a representative. After reviewing the information provided to him at the predisciplinary meeting, Dr. Veasey found that Appellant had violated all the provisions previously cited and decided to terminate Appellant's employment with the Department. He based this decision upon the facts stated in summary in the Notice of Discipline. The Disciplinary Letter was mailed to Appellant on November 3, 2000. (Exhibit 2)

39. Dr. Veasey testified at the hearing that, during the meeting and before reaching his decision, he listened to Appellant's side of the story. He based his decision upon Appellant's admissions of fraud. Dr. Veasey testified that receiving funds fraudulently from the City is a very serious matter. He also stated that, as a Department employee, Appellant had the responsibility to conduct herself in the highest ethical manner. According to Dr. Veasey, it was irrelevant whether Appellant was acting as "employee" or "client." When one is willingly defrauding the City, client and employee roles cannot be separated. Appellant was in a position of trust. She knew not to steal from the City and she knew the penalties for not complying with the rules. While he might have considered repayment prior to Appellant getting caught in mitigation, for Dr. Veasey Appellant's offer to make restitution after the charges were made against her was not a factor for mitigation. Dr. Veasey was also concerned that Appellant had knowingly falsified documents; her reasons "why" were not relevant. It also did not matter to Dr. Veasey that Appellant might have been entitled to the day care monies had the Appellant not falsified the documents. He also stated that, although she told him that she had expected to get caught, Appellant never indicated to him that she planned to stop doing it.

40. Appellant filed her Notice of Appeal on November 11, 2000.

DISCUSSION AND CONCLUSIONS OF LAW

Applicable Rules and Regulations

CSR Rule 16 governs discipline. CSR §16-10 sets out the purpose of the Rule:

The purpose of discipline is to correct inappropriate behavior or performance. The type and severity of discipline depends on the gravity of the infraction. 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 or designee will impose the type and amount of discipline she/he believes is needed to correct the situation and achieve the desired behavior or performance.

The disciplinary action taken must be consistent with this rule. Disciplinary action may be taken for other inappropriate conduct not specifically identified in this rule.

CSR §16-20, Progressive Discipline, provides in relevant part:

- 1) In order of increasing severity, the disciplinary actions which an appointing authority or designee may take against an employee for violation of career service rules, the Charter of the City and County of Denver, or the Revised Municipal Code of the City and County of Denver include:
 - a) Verbal reprimand, which must be accompanied by a notation in the supervisor's file and the agency file on the employee;
 - b) Written reprimand, a copy of which shall be placed in the employee's personnel file kept at Career Service Authority;
 - c) Suspension without pay, a copy of the written notice shall be placed in the employee's personnel file kept at Career Service Authority;
 - d) Involuntary demotion, a copy of the written notice shall be placed in the employee's personnel file kept at Career Service Authority; and
 - e) Dismissal, a copy of the written notice shall be placed in the employee's personnel file kept at Career Service Authority.
- 2) Wherever practicable, discipline shall be progressive. However, any measure or level of discipline may be used in any given situation as appropriate. This rule should not be interpreted to mean that progressive discipline must be taken before an employee may be dismissed.
- 3) In those cases when the discipline deemed appropriate is suspension without pay of an overtime-exempt employee, the suspension shall be for at least a whole workweek or multiples of whole workweeks.

CSR §16-50, Discipline and Termination, provides, in relevant part:

A.. Causes for dismissal.

The following may be cause for dismissal of a career service employee. A lesser discipline other than dismissal may be imposed where circumstances warrant. It is impossible to identify within this rule all conduct which may be cause for discipline. Therefore, this is not an exclusive list.

- 1) Gross negligence or willful neglect of duty.
- 3) Dishonesty, including, but not limited to: altering or falsifying official records or examinations; accepting, soliciting, or making a bribe; lying to supervisors or falsifying records with respect to official duties,

including work duties, disciplinary actions, or false reporting of work hours; using official position or authority for personal profit or advantage, including kickbacks; or any other act of dishonesty not specifically listed in this paragraph.

- 20) Conduct not specifically identified herein may also be cause for dismissal.

CSR §16-51, Causes for Progressive Discipline, provides, in relevant part:

A.. The following unacceptable behavior or performance may be cause for progressive discipline. Under appropriate circumstances, immediate dismissal may be warranted. Failure to correct behavior or committing additional violations after progressive discipline has been taken may subject the employee to further discipline, up to and including dismissal from employment. It is impossible to identify within this rule all potential grounds for disciplinary action; therefore, this is not an exclusive list.

- 2) Failure to meet established standards of performance -- including either qualitative or quantitative standards.
- 5) Failure to observe department regulations.
- 6) Carelessness in performance of duties and responsibilities.

Analysis

The City Charter C5.25 (4) requires the Hearing Officer to determine the facts in this matter "de novo." This has been determined by the Courts to mean an independent fact-finding hearing considering evidence submitted at the de novo hearing and resolution of factual disputes. *Turner v. Rossmiller*, 35 Co. App. 329, 532 P.2d 751 (Colo. Ct. of App., 1975).

Because this is an appeal of a disciplinary action (termination from employment) the Agency has the burden of proof to demonstrate that its decision was within its discretion and appropriate under the circumstances.

The first provision with which Appellant has been charged with violating is CSR §16-50-A. 1). "Gross negligence or willful neglect of duty." These terms are not defined in the CSA Rules.

Negligence is a failure to use reasonable care or a failure to act in a reasonably prudent manner under the circumstances. *Lavine v. Clear Creek Skiing Corp.*, 557 F.2d730 (10th Cir. 1977); *Metropolitan Gas Repair Service, Inc. v. Kulik*, 621 P.2d 313 (Colo. 1980); *Rice v. Eriksen*, 476 P.2d 579 (Colo. App. 1970). Gross negligence involves a higher form of culpability than mere negligence. "Gross" in this context means flagrant or

beyond all allowance, *Lee v. State Board of Dental Examiners*, 654 P.2d 839 (Colo. 1982), or showing an utter lack of responsibility: *People v. Blewitt*, 192 Colo. 483, 563 P.2d 1 (1977). Willful neglect of duty transcends any form of negligence and involves conscious or deliberate acts. See *Turner v. Lyon*, 189 Colo. 234, 539 P.2d 125 (1976); *Drake v. Albeke*, 188 Colo. 14, 532 P.2d 225 (1975).

“Gross negligence” is defined by *Black’s* as:

The intentional failure to perform a manifest duty in reckless disregard of the consequences as affecting the life or property of another; such a gross want of care and regard for the rights of others as to justify the presumption of willfulness and wantonness. “Gross negligence is substantially higher in magnitude than simple inadvertence, but falls short of intentional wrong.” (Cite omitted)¹

“Willful” is generally defined as “obstinately and often perversely self-willed; done deliberately.”²

Black’s defines “willful” as:

Proceeding from a conscious motion of the will; voluntary. (Cite omitted)...Intending the result which actually comes to pass; designed; intentional; not accidental or involuntary...A willful act may be described as one done intentionally, knowingly, and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly, or inadvertently. (Cite omitted.)³

The use of these terms in the CSR as a basis for discipline requires the employee to be purposely or willfully performing her duties at an intentionally substandard or inappropriate level. See *In the Matter of the Appeal of Dennis Fresquez*, CSA Appeal No. 154-00. As intentional and inappropriate as Appellant’s misconduct is, there is no proof presented that any of her actual job responsibilities were performed at a substandard level. Therefore, the allegation that Appellant violated CSR §16-50 A.. 1) is dismissed.

The next provision with which Appellant is charged is CSR §16-50 A.. 3), dishonesty, which includes, but is not limited to falsifying official records and “any other act of dishonesty not specifically listed.” While most of the listed reasons in the CSR provision deal with acts of dishonesty specifically arising from activities of an employee as an “employee” (i.e., falsifying records, using official position for personal profit or advantage, etc.), the inclusion of “any other act of dishonesty” demonstrates that the CSA Board, when adopting this Rule, did not want its provisions limited to acts of dishonesty in the performance of one’s official duties only. Any act of dishonesty, whether work-related or, as Appellant calls it, “client” related, can be grounds for termination.

The record is replete with evidence that Appellant acted in a dishonest manner while employed by the Department. By Appellant’s admissions alone, she engaged in at least seven dishonest acts while in the Department’s employ:

¹ *Black’s Law Dictionary*, 4th Ed., 1951

² *Miriam-Webster’s Collegiate Dictionary*, 10th Ed., 1993

³ *Black’s*, *op cit*.

1. Appellant admitted that she signed Laurie Herrera's name on the Child Care Attendance and Billing Forms where the provider is required to certify her compliance with the applicable laws and the accuracy of the records.
2. Appellant admitted that she cashed the day care check made out to Laurie Herrera and distributed the funds herself.
3. Appellant that she was not honest about her day care providers.
4. Appellant admitted that Vicky Padilla was providing day care for her children and that she could not list her as the provider because Ms. Padilla would lose her SSI benefits.
5. Appellant testified that Jean Sisneros and her daughter had been providing day care for her for almost two years. She stated that she could not name Ms. Sisneros as her day care provider because Ms. Sisneros would have been penalized.
6. Appellant admitted that she has not paid any of the money back for child care while she was out on Family Medical Leave for stress in June and July 2000.
7. Appellant admitted that she was driving an unlicensed, unregistered vehicle and that she was using license plates that belonged to another person.

Given the abundant evidence of Appellant's admitted dishonesty with the Department and the DMV, the Hearing Officer need not consider the other alleged acts of dishonesty, including the incident involving Tiffany Jarmello and the phone conversation with an unidentified person in which Ms. Jarmello identified herself as someone else in compliance with a request by Appellant.

Appellant's only defense to these acts of dishonesty is that she did them as a client rather than as an employee. The Hearing Officer disagrees with the suitability of such a defense. As stated above, the CSR purposely does not limit acts of dishonesty for which an employee may be terminated to acts of dishonesty committed in the employee capacity only. To permit such an interpretation of this Rule would create the situation that a City employee can do anything illegal while "off-duty" and not be subject to discipline by the City for the illegal acts. This would be in total disregard of the need for public employees to abide by the highest of ethical standards at all times, a requirement necessary for the retention of the public trust in its officials.

The overwhelming evidence establishes that Appellant violated CSR §16-50 A. 3) by her numerous and continuing acts of dishonesty.

The violation under the "catch-all" provision, CSR §16-50 A. 20) is dismissed. Appellant's misconduct is covered by a specific provision of CSR §16-50 A., as well as CSR 16-51 A. The catchall provisions in Rule 16 exist for the rare instances when an employee engages in an activity that that CSA Board did not think of when listing specific

misconduct that might constitute reasonable grounds for dismissal or progressive discipline but which might justify such action by an agency. That is not the issue here. The grounds for Appellant's discipline rest in a specifically defined provision of the CSR.

Appellant has been charged with violating CSR §16-51 A. 2), the failure to meet established standards of performance. The requirements for this provision are meant to cover performance deficiencies that can be measured upon either qualitative or quantitative standards, such as those one finds in a PEPR. The Department did not present any evidence of performance deficiencies in Appellant's work. This allegation is dismissed.

Appellant is charged with violating CSR §16-51-A. 6), carelessness in performance of duties and responsibilities. The Department did not present any evidence that Appellant was careless in her actual work duties. Therefore, this allegation is dismissed.

Appellant is also charged with violating CSR §16-51 A. 5), failure to observe Department regulations. Again, Appellant claims that she should not be found to have violated this provision because her misconduct occurred in her "client capacity." The Hearing Office finds this argument to be as disingenuous as Appellant's attempt to say she cannot be terminated for dishonesty because it was "client dishonesty," not "employee dishonesty." Appellant, as an employee of the Department, had an increased obligation to abide by the Department's regulations for the public assistance programs for which she was requesting to qualify, not less. The fact of the matter is Appellant lied to her eligibility technicians, did not include her car as an asset on her Food Stamps application, lied about her day care providers, and forged another person's signature to official documents. None of these actions are consistent with the Federal, State or Municipal regulations under which the Department operates. Appellant has clearly violated CSR §16-51 A. 5); the allegation is sustained.

The last issue before the Hearing Officer is the appropriate discipline for Appellant's violations of the CSR. Dr. Veasey terminated Appellant from her employment because of the extreme nature of her misconduct. The Hearing Officer agrees this is appropriate.

Dr. Veasey testified at the hearing that receiving funds fraudulently from the City is a very serious matter. He also stated that, as a Department employee, Appellant had the responsibility to conduct herself in the highest ethical manner. For Dr. Veasey, it was irrelevant whether Appellant was acting as "employee" or "client;" when one is willingly defrauding the City, client and employee roles cannot be separated. The Hearing Officer concurs.

Appellant was in a position of trust. She knew not to steal from the City and she knew the penalties for not complying with the rules. Her statements to Mr. Spikes, Ms. Raatz and Dr. Veasey, as well as her testimony at this hearing, indicate that, even though she knew she was acting wrongly, she was willing to continue her frauds until she got caught.

Even after she was caught, Appellant continued acting in an inappropriate manner. She minimizes her thefts and frauds. She has said everything from "I did it because I was a victim of domestic violence," to it is all fault of a sister-in-law who turned her in because of a family matter to "everyone else does it." Appellant's total lack of understanding of the nature of her acts was most clearly demonstrated to the Hearing Officer when it was related that Appellant was more concerned about being embarrassed in front of co-workers by

being escorted out of the building by security or the police than she was at getting caught at her fraud.

The Hearing Officer also agrees with Dr. Veasey that while she might have considered repayment in mitigation if it occurred prior to Appellant getting caught, Appellant's offer to make restitution after the charges were made against her was too little, too late. The fact that there is a vague offer out there is not mitigation. Appellant has not yet paid the money back. Her excuse that nobody has asked for it does not exonerate her.

Appellant argues that she should not be terminated because she did not use the money for herself and gave the money to the actual day care providers. This might have been a viable argument if the problem with providing the correct name of her day care provider lasted only a month or so. The fact of the matter is Appellant was dishonest about her day care providers for over three years and she was signing for money and distributing it on her own and as she saw fit, not in compliance with the regulations governing day care assistance.

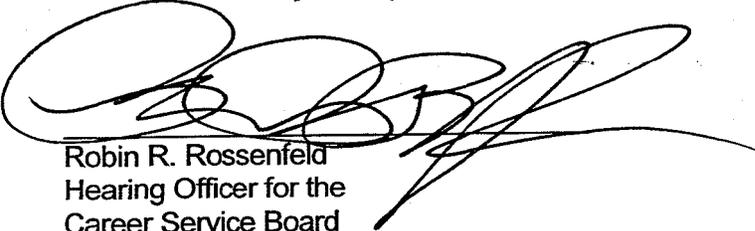
Appellant's last argument, that she should not be punished because she did her best not to be dishonest and that, if she had wanted to, she could have really committed a fraud by creating a phony provider and collecting the money for herself, does not even merit comment about its self-apparent inappropriateness.

Simply put, Appellant's misconduct was severe. She violated the public trust by lying to other Department employees, forging the name of another person on official documents and disbursement checks, driving an unregistered and unlicensed car with plates not her own, helping others defraud Social Security and other benefit plans, and possibly asking others to lie for her. The severity of these actions is compounded by Appellant's continuing failure to understand and accept her culpability. Instead of showing remorse, she only offers excuses. Dr. Veasey's determination that Appellant's misconduct merited termination is amply supported by the evidence in the record. The discipline, therefore, is upheld.

ORDER

The Hearing Officer MODIFIES the disciplinary action as follows: the Department's determination that Appellant violated CSR §§16-50 A.. 3) and 16-51 A.. 5) is SUSTAINED; the Department's determination that Appellant violated CSR §§16-50 A.. 1) and 20) and 16-51 A.. 2) and 6) is DISMISSED. Appellant's termination from employment with the Department is SUSTAINED and the request for reinstatement and recovery of back pay and benefits is DENIED.

Dated this 31st day of May 2001.



Robin R. Rossenfeld
Hearing Officer for the
Career Service Board