

DECISION MODIFYING DISCIPLINE FROM DISMISSAL TO A 90-DAY SUSPENSION

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IN THE MATTER OF THE APPEAL OF:

██████████, Appellant,

vs.

DEPARTMENT OF SAFETY, DENVER SHERIFF'S DEPARTMENT,  
and the City and County of Denver, a municipal corporation, Agency.

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I. INTRODUCTION

The Appellant, ██████████, appeals his dismissal from employment with the Denver Sheriff's Department (Agency) on June 17, 2013, 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 January 14 and 15, 2014. The Agency was represented by Amy Kingston and Richard Stubbs, Assistant City Attorneys, while the ██████████ was represented by Dan Foster, Esq., and Marcy Ongert, Esq., Foster Graham Milstein and Calisher, LLP. The following Agency exhibits were admitted into evidence: 1-3; 1-4; 1-11 (middle ¶ only); 1-13 through 2-3; 2-5; 2-10; 2-12 through 2-15; 2-22 through 2-26; 2-30, 2-31; 2-34; 2-35; 3; 4; 8; 9; 11-22; 24; 27-31; 33; 35; 41; and 45-47. ██████████ exhibits C, D, G, H, and L were admitted. The following witnesses testified for the Agency: Lea Bernstein; the ██████████ and Deputy Manager of Safety Ashley Kilroy. The ██████████ testified on his own behalf during his case-in-chief, and presented the following additional witnesses: Matthew Davis; Sgt. Earl Sims; Captain Silver Gutierrez (by telephone); and Chief Elias Diggins.

II. ISSUES

The following issues were presented for appeal:

- A. whether the ██████████ violated any of the following Career Service Rules: 16-60 L; 16-60 P; 16-60Y; and 16-60 Z;
- B. if the ██████████ violated any of the aforementioned Career Service Rules, whether the Agency's decision to dismiss him conformed to the purposes of discipline under CSR 16-20;
- C. whether the Agency's termination of ██████████ employment was motivated by unlawful retaliation, based upon his previous Career Service Appeal.

### III. FINDINGS

██████ was a deputy sheriff with the Agency for almost 12 years. He was familiar with the Department's rules, regulations, and was expected to follow them. He was considered to be a superb employee, having received numerous commendations and high work review ratings. He had no incidents of inmate abuse.<sup>1</sup>

On May 25, 2011, ██████, 15-year old step-daughter was singing a rap song ██████ found vulgar and offensive. He told her to stop and she refused. An argument ensued which turned physical. ██████ used force to remove his step-daughter from the home. She sneaked back to retrieve shoes and personal items. Another argument and physical fight ensued, with ██████'s mother joining in. ██████ threw a cordless house phone at his step-daughter which struck her in the back.

One week later, ██████ step-daughter reported to her high school counselor that ██████ pushed her, choked her, and threw a phone at her which struck her in the back in the May 25 incident. About two hours later, ██████ called the Arapahoe County Sheriff's Department to report his step-daughter had stolen jewelry from their home on May 25.

The Arapahoe County Sheriff's Office investigated both reports, resulting in charges of child abuse against ██████. ██████ consulted with Sgt. Romero, who investigated the criminal complaint, concerning the effect of accepting a proposed plea bargain. ██████ learned the Agency would treat a no contest plea to a criminal violation as a conviction. Nonetheless, on March 7, 2012, ██████ pled no contest to child abuse under Colorado Revised Statute § 18-6-401(1)<sup>2</sup> and (7)(b)(I),<sup>3</sup> a class 2 misdemeanor. He entered into an 18-month deferred judgment under supervised probation, the terms of which required completion of anger management classes, no corporal punishment of any children, community service, and payment of fees and costs. Pursuant to the terms of his plea agreement, the case was dismissed after nine months, upon ██████ early completion of all the conditions of his deferred judgment. [Exhibit 11]. ██████ criminal arrest and case were sealed by court order on March 6, 2013. [Exhibit L].<sup>4</sup>

The Agency placed ██████ on investigatory leave on March 27, 2013, [Exhibit 15], while it undertook an investigation. The Agency served him with a letter in contemplation of discipline on May 28, 2013. [Exhibit 16]. ██████ attended a pre-

<sup>1</sup> See below, at VI.B. for more complete work history.

<sup>2</sup> CRS §18-6-401. Child abuse.

(1) (a) A person commits child abuse if such person causes an injury to a child's life or health, or permits a child to be unreasonably placed in a situation that poses a threat of injury to the child's life or health, or engages in a continued pattern of conduct that results in malnourishment, lack of proper medical care, cruel punishment, mistreatment, or an accumulation of injuries that ultimately results in the death of a child or serious bodily injury to a child.

<sup>3</sup> (7)(b)(I) [when no injury results] An act of child abuse when a person acts knowingly or recklessly is a class 2 misdemeanor...

<sup>4</sup> Before hearing, ██████ filed an objection to any use of his criminal case by the Agency or at hearing. Both sides presented briefs on the issue of the use of a sealed criminal record in a subsequent administrative disciplinary action. I ordered that it was permissible for the Agency to use and refer to the underlying criminal case for reasons stated in my "Order re Various Motions 11/25/13."

disciplinary meeting with his attorney on March 13, 2013. On June 17, 2013, the Agency served its notice of termination. This appeal followed timely on June 28, 2013.

In a prior appeal, the Agency assessed a 32-day suspension against ██████ on July 16, 2012. ██████ appealed, resulting in a reduction from 32 to a 2-day suspension on November 19, 2012.

#### IV. ANALYSIS

##### A. Jurisdiction and Review

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

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

This case contains a mixed burden of proof. The Agency retains the burden of persuasion, throughout the case, to prove ██████ violated one or more cited sections of the Career Service Rules, and to prove its decision to terminate the ██████ employment complied with CSR 16-20. ██████ retains the burden of persuasion, throughout the case, to prove the Agency engaged in unlawful retaliation. The standard by which the moving party must prove its claims is by a preponderance of the evidence.

##### C. Career Service Rule Violations

###### 1. CSR 16-60 L. Failure to observe written departmental or agency regulations, policies or rules.

The Agency believed ██████ violated the following.

a. Departmental Order (D.O.) 300.11.1 Conduct Prohibited by Law . Deputy Sheriffs and employees shall not violate... state or federal statutes.

b. CSR 16-60 P. Conviction of, or being charged with a crime.

c. D.O. 300.11.6 Conduct Prejudicial.

The Agency's evidence that ██████ violated D.O. 300.11.1 and CSR 16-60 P. was his plea of no contest to child abuse. ██████ denied many of the facts underlying that criminal charge. However, his denial, while relevant for purposes of mitigation to the degree of discipline, does not change the effect of his no contest plea. Under the Career Service Rules, a no contest plea constitutes a conviction as is evident from the following.

CSR 15-10, Definition

Conviction: The adjudication of a criminal charge through...

D. A plea of *nolo contendere* (no contest)....

Assigning that definition its plain and ordinary meaning, ██████ no contest plea was a conviction under CSR 16-60 P. In other words, under the Career Service Rules, he was convicted of the misdemeanor crime of child abuse when he pled no contest. As such, he also violated Departmental Order 300.11.1, conduct prohibited by law.

2. CSR 16-60Y. Conduct which violates the [Career Service] Rules... or any other applicable legal authority.

A violation of CSR 16-60 Y. requires a different analysis from the analysis for CSR 16-60 P. and D.O. 300.11.1. An employee violates CSR 16-60 P. and Agency Rule 300.11.1 simply by pleading no contest to a criminal charge. On the other hand, CSR 16-60 Y. requires an analysis of the underlying conduct, irrespective of any plea or finding of criminal culpability. Deputy Manager of Safety Kilroy, the decision-maker, determined the following evidence proved a violation under this rule:

██████ admitted fighting with his step-daughter;  
he admitted throwing the house phone at her and striking her in the back with it;  
he admitted using force to put her outside;  
the nurse's report, made when the step-daughter reported the abuse, was consistent with the step-daughter's account of the incident; [Exhibit 1-21];  
case worker Bernstein, who interviewed ██████ step-daughter one week after the incident, observed bruising on the step-daughter's left arm, and multiple bruises on her knees.

[Kilroy testimony].

██████ replied he used limited force to remove his step-daughter because she was out of control, but did not injure her. Further, he testified he was within his right as a parent to punish his step-daughter for misbehavior. He testified his step-daughter was one of six children he raised alone because his step-daughter's mother was a drug-addict, and the step daughter was seeing a much older boy, consuming illicit drugs, and otherwise headed down a dangerous path. He also claimed he did not harm his step-daughter on May 25, 2011.

At hearing, ██████ testified he threw a phone at his step daughter, but may not have actually struck her. He offered alternate explanations for her reported injuries: she plays basketball at school, and she is very active, or her wounds could have been self-inflicted, or the wounds could have been caused by ██████ mother, who also fought with his step-daughter the same night after finding out the step-daughter stole her jewelry. He also testified his step-daughter's account of the May 25, 2011 incident was untrustworthy because she is manipulative and she was trying to deflect culpability for her theft of jewelry from the family home. ██████ stated social worker

Lea Bernstein, who investigated the incident relayed that the police officer who was dispatched to the school took a statement from the dean of the school who said [REDACTED] step-daughter can be manipulative. [REDACTED] testimony].

The Agency's photographic evidence of the step-daughter's injuries, [Exhibits 35-1 through 35-27] was inconclusive. The nurse report, and case-worker Bernstein's accounts proved, by a preponderance of the evidence, that the step-daughter had suffered some injury. However, the evidence that [REDACTED] caused those injuries was not more probable than [REDACTED] denial. Whether [REDACTED] choked, threw his step daughter, and caused her to slam her head into a wall, as alleged by the Agency, was not proven with preponderant evidence, since there was evidence the step-daughter's statements were not trustworthy. [see, e.g. Bernstein cross-examination; [REDACTED] testimony]. Nor did the Agency prove [REDACTED] engaged in a pattern, or had a history, of child abuse, since a subsequent investigation into those claims was inconclusive.

Nonetheless, [REDACTED] admissions that he threw his house phone at his step-daughter on 5/25/11 and struck her with it; and that he used force to throw her out of the house was proof of those acts. His subsequent waffling at hearing, as to whether the phone actually struck her, is immaterial in light of his no contest plea of child abuse. [REDACTED] conduct, in throwing a phone at his step-daughter and using force to throw her out of his house constitute violations of CSR 16-60 P. and D.O. 300.11.1, and therefore violate CSR 16-60 Y.

Departmental Rule 300.11.6 Conduct Prejudicial. Deputy Sheriffs and employees shall not engage in conduct prejudicial to the good order and effectiveness of the department or conduct that brings disrepute on or compromises the integrity of the City or the Department or conduct unbecoming which:

- (a) May or may not specifically be set forth in Department rules and regulations or the Operations Manual; or
- (b) Causes harm greater than would reasonably be expected to result, regardless of whether the misconduct is specifically set forth in Department rules and regulations of the Operations Manual.

Prohibited conduct under this Agency rule may take one of three forms: conduct prejudicial to the good order and effectiveness of the Agency; conduct bringing disrepute on or compromising the good order and effectiveness of the Agency; or conduct unbecoming. In addition, the form of conduct prohibited under subsection (b), above, includes conduct that results in "serious consequences or potential consequences." [REDACTED] CSB 31-12A, 3 (10/3/13). I interpret the words "potential consequences" to require something more than any consequence capable of being imagined.

Wrongdoing under D.O. 300.11.6 may be found for unprofessional or unethical conduct, *Id* at 4-5, and, unlike CSR 16-60 Z., conduct prohibited by this D.O. does not require a showing of actual harm. *Id*. Given this broad application, the question becomes whether [REDACTED] conduct outside the workplace was "conduct prejudicial,"

as intended by D.O. 300.11.6. The specific conduct in question is [REDACTED] throwing a phone at his step-daughter and his forcing her out of the house.

The Agency is a paramilitary organization. Such organizations hold law enforcement officers to a higher code of ethics and conduct than civilian employees, [REDACTED] at 5, due to the degree of authority bestowed on them. *Id.* Accordingly, the Agency may consider bad conduct outside the workplace as having a negative impact on the professional image of the Agency, and a negative impact on such officer's ability to model appropriate behavior for subordinates. *Id.* Accordingly, [REDACTED] actions outside the workplace were conduct prejudicial within the meaning of D.O. 300.11.6.

### CSR 15-5 Employee Conduct

Every employee in the Career Service shall conscientiously fulfill the duties and responsibilities of his or her position. The conduct of every employee during work hours or at any time while representing the agency, department, or City shall reflect credit on Career Service and the City and County of Denver (City).

Kilroy found [REDACTED] conduct violated CSR 15-5 which requires Career Service employees to work "conscientiously" and to "reflect credit" upon the City. I read this introductory rule as a general guiding principle and not as an enforceable rule which provides reasonable notice of prohibited conduct or sub-standard performance.

### 3. CSR 16-60 Z. Conduct prejudicial to the good order and effectiveness of the department or agency, or conduct that brings disrepute on or compromises the integrity of the City.

Kilroy testified [REDACTED] violated this rule for the same reasons his conduct violated Agency Order 300.11.6, Conduct Prejudicial. [Kilroy testimony]. However, the standards under the two rules are substantially different. Under the Career Service Rule, the agency must prove actual harm to the agency's mission or to the City's reputation or integrity. In re Jones, CSB 88-09A, 3 (9/29/10). In contrast, D.O. 300.11.6 encompasses "conduct that might otherwise appear to be minor, yet result in serious consequences or potential consequences." [REDACTED] CSB 31-12A, 3 (10/3/13), reversing in part, [REDACTED], CSA 31-12 (11/19/12).

Kilroy testified [REDACTED] conviction could result in potential liability to the City by keeping a convicted child abuser employed as a guardian of inmates; but potential consequences, alone, are insufficient to establish a violation of CSR 16-60 Z., which requires a showing of actual harm to the Agency or the City. [*Id.*].

Finally, Kilroy stated she found [REDACTED] violated CSR 16-60 Z. because his family knows he works for the Agency. This finding evidence also fails to establish actual harm. If the inference was that [REDACTED] actions resulted in actual harm to [REDACTED] daughter, that inference misconstrues this rule, which requires a showing of tangible harm to the Agency or to the City. No violation was established under this rule.

## V. [REDACTED] RETALIATION CLAIM

A claim of retaliation is established if (1) [REDACTED] engaged in a protected activity; (2) the Agency took an action that a reasonable employee would have found materially adverse; and (3) there exists a causal connection between the protected activity and the adverse action. Metzler v. Federal Home Loan Bank of Topeka (10th Cir. 2006), citing Burlington Northern & Santa Fe Ry. v. White, 126 S. Ct. 2405 (U.S. 2006).

[REDACTED] alleged Kilroy was "out to get him" after the Agency's discipline in his previous case was reduced from a 32-day suspension to 2 days. [REDACTED]

[REDACTED], *reversed, in part, on other grounds*, [REDACTED] [REDACTED] also claimed Kilroy showed retaliatory intent when she rejected this case, originally filed as a written reprimand, and required further investigation. Kilroy also rejected the second iteration of the case, recommended to her as a 60-day suspension. [Kilroy cross-exam].

[REDACTED] appeal establishes a protected activity. The Agency's dismissal followed about seven months later. While establishing an adverse action, the length of time between the two events raises some doubt about a causal connection between them. Nonetheless, a reasonable employee might well be dissuaded from filing an appeal of his suspension, knowing he would be dismissed seven months later. That reasonable fear establishes the second link of [REDACTED] retaliation claim, material adversity.

As to the element of causal connection, Kilroy testified convincingly that the first investigation revealed questions about possible previous child abuse by [REDACTED]. She was obligated to have those allegations investigated to find out if the allegations were sustained and if so, what disciplinary or legal action occurred as a result. [Kilroy testimony]. She also testified as to other "triggers" in the original investigation which required further inquiry.<sup>5</sup>

Kilroy's explanation is as plausible as [REDACTED] contention that Kilroy's alleged frustration over the reduction of [REDACTED] earlier suspension metamorphosed into a retaliatory motive in this case. Retaliation is not proven. Even more, Kilroy's disciplinary decision appeared to be based upon a conscientious evaluation of the evidence before her.

## VI. DEGREE OF DISCIPLINE<sup>6</sup>

The purpose of discipline is to correct inappropriate behavior if possible. Appointing authorities are directed by CSR 16-20 to consider the severity of the

<sup>5</sup> Those additional triggers included the evidence in Exhibits 1-4; 1-5; 1-13; 1-20; 1-23 through 26; 2-3; 2-5; 2-10; 2-12; 2-22; 2-26; 2-30; 2-31; 2-34; 2-35; and 2-36.

<sup>6</sup> While Deputy Manager Kilroy chose a level of discipline based on her assessment of the Agency's disciplinary matrix, [see Exhibit 24], I review the Agency's choice of the degree of discipline based on its compliance with the Career Service Rules, [CSR 16-20], under a deferential standard of review. City and County of Denver v. Weeks, 10CA1408, 20 (10/13/11) ("[S]ubstantial deference is to be given to the Agency's decision..."); *cert. den'd*, Weeks v. City and County of Denver, 12 Colo. 53 (7/30/12).

offense, an employee's past record, and the penalty most likely to achieve compliance with the rules. CSR § 16-20.

██████ no contest plea established violations of CSR 16-60 L., and Y, irrespective of his intent, purpose, or mitigating factors. In contrast, when reviewing the level of discipline, the palette of considerations becomes much broader.

A. Severity of the offense

Kilroy testified the Agency would never hire a deputy with a child abuse conviction, and the Agency does not keep anyone with such a conviction. [Kilroy testimony]. This bright-line formulation of a zero-tolerance policy fails to account for the circumstances of each case. I respectfully disagree with Kilroy's determination that there was no mitigation to offset the Agency's presumptive determination that termination was the only possible outcome. Several factors substantially mitigated ██████ abuse conviction, upon which the Agency based its dismissal.

1. ██████ had sole custody of his step-daughter, and he retained custody even after the child abuse incident. This fact lends substance to his assertion that the criminal case was not as egregious as alleged by the Agency.
2. ██████ step-daughter did not testify and therefore did not contradict evidence that the underlying incident was not egregious.
3. ██████ step-daughter had stolen jewelry from family home at the time the physical fight occurred. This fact, alone, does not excuse a poor parenting choice to engage in a physical eviction,<sup>7</sup> or to throw a phone, whether or not it struck home, but it does lend credibility to ██████ testimony that, although he loves her, his step-daughter had become exceedingly difficult, rebellious, and such a bad influence on the other children that he evicted her, at least in part, to protect the remaining family.
4. The incident with his step daughter occurred while ██████ consistently exceeded expectations in his performance as a deputy sheriff, including his handling of inmates. This fact belies the Agency's assertion that ██████ child abuse conviction makes it more probable he could or would act out in similar fashion with an inmate. Moreover, the Agency's own disciplinary matrix requires the decision maker to consider mitigating factors, including:

19.0 Consideration of Mitigating and Aggravating Circumstances

19.1 ...The reviewer must take into account all of the circumstances of a case...

19.6. Mitigating circumstances may include, but are not limited to:

19.6.1 Willingness to accept responsibility and acknowledge

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<sup>7</sup> Ironically, one of the functions of the Denver Sheriff's Department is to conduct evictions.



wrongdoing;

19.6.2 Circumstances under which the rule was violated;

19.6.3 The culpable mental state of the deputy in the commission of the violation;

19.6.4 Complimentary history, including awards, commendations and positive public recognition;

19.6.6 Prior work history, such as positive evaluations and/or work performance...;

19.6.7 Minimal or lack of prior disciplinary history relative to the deputy's years of service.

[Exhibit I].

#### B. Past record

Every one of [REDACTED] performance evaluations which were in evidence, from 2008 through 2012, rated his work as "exceeds expectations," "exceptional," (prior to 2009) or "outstanding." [Exhibit H, H-25]. It is impossible to ignore the extent to which his supervisors have praised [REDACTED] performance, including the following comments which are pertinent to considerations here.

Sergeant [REDACTED] has displayed a concern for both the officers and the prisoners, insuring that all under his supervision are safe and given every consideration possible under our procedures and policies. [Exhibit H-25].

Sgt. [REDACTED] receives complaints from the public and staff in a manner that displays genuine concern and conveys that he will give the appropriate consideration to the issue. [Exhibit H-48].

Sgt. [REDACTED] thinks quickly on his feet and has displayed that he is very capable in crisis or high stress situations... I am convinced that he is one of the finest supervisors that I have worked with in this Agency. [Exhibit H-37].

Sgt. [REDACTED] makes more than the required number of rounds and responds to any emergencies in a timely manner. He is respected by the officers for his leadership role and insures that the officers abide by all rules and regulations and act in a safe and humane manner when dealing with hostile prisoners. [H-29].

Sgt. [REDACTED] has proven to be an excellent supervisor. He has quickly learned an abundant amount of information because of his willingness and diligence. He is respected by the officers and [is] one of the sergeants that can always be relied upon to answer questions and give good direction

when needed. He is concerned about the safety of both officers and prisoners and does whatever he can to help whoever is in need. It is a privilege to work with someone of his caliber... [Exhibit H-27]. He is fair and [impartial] to all. He takes reasonable action to investigate, eliminate, and prevent bias and discrimination in the workplace... [Exhibit H-22].

Excellent in training level 3 officers. This is a high stress and very technical area to work which takes a certain temperament as well as a keen eye. He commends in public, [and] disciplines in private, ensuring the staff is trained in a positive environment. [Exhibit H-21].

He assures staff is very well trained. He prevents safety problems immediately and ensures a safe working environment for staff. He responds appropriately to alarms and takes command of the situation when necessary. [Exhibit H-19].

Sgt. [REDACTED] has proven to easily be one of the best unit sergeants one could ask for. He is an excellent supervisor who displays genuine concern for both staff and inmates. His savvy in dealing with special inmates is difficult to match." [Exhibit H-17].

These statements, and many others, portray an employee whose ethics and performance were overwhelmingly held in the highest esteem by colleagues, supervisors, and inmates.

[REDACTED] had one prior disciplinary conviction for inappropriate conduct with a colleague in 2012, for which he ultimately received a two-day suspension. [REDACTED], [REDACTED] The Agency based its discipline, in part, on the risk that, because of his use of force at home, [REDACTED] could or would use excessive force on inmates, (Kilroy testimony), a risk that is not justified by the evidence. Despite the excellence of his past record, the Agency assigned no mitigation to his discipline. [Kilroy testimony].

### C. Likelihood of reform

[REDACTED] work performance and record strongly indicate he was and can continue to be a highly successful employee; and, based upon his commendations and successful dealings with inmates, it appears he would be able to reform the misconduct outside of work which resulted in his dismissal.

The Colorado Court of Appeals, [Weeks v. People, 10CA1408 (10-13-2011), cert. denied, 10 No. 12SC53 (7/30/12)] held an agency's election of the degree of discipline is entitled to substantial deference.<sup>8</sup> That deference is particularly applicable to the

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<sup>8</sup> Despite its conclusions, it is doubtful this opinion carries any precedential value, as it was an unpublished opinion. See Weisgerber, UNPUBLISHED OPINIONS: A CONVENIENT MEANS TO AN UNCONSTITUTIONAL END, 97 Georgetown Law Journal 621 (2009); 39 Colo. Law. 71 (Nov. 2010); Bittle v. Brunetti, 750 P.2d 49 n.2 (Colo. 1988).

Denver Sheriff's Department. "[T]he Denver Sheriff's Department, a paramilitary organization, should be able to enforce a code of ethics and conduct on its employees that requires more of them than what might be expected of other employees in the Career Service." [REDACTED] [REDACTED] In this case, too, substantial deference must be accorded to the Agency's choice.

Nonetheless, "substantial deference" does not mean "total deference." The severity of the proven offenses, an appellant's past record, and the likelihood of his reform must be weighed independently of the agency's decision, pursuant to the dictates of CSR 16-20. If hearing officers did not exercise such independent judgment, appeal hearings would merely parrot agency choices, in derogation of *de novo* review requirements. Turner v. Rossmiller, 532 P.2d 751 (Colo. App. 1975).

In view of these considerations, the Agency's decision to dismiss [REDACTED] was clearly excessive where it failed to apply plainly mitigating evidence, and failed to consider [REDACTED] overwhelmingly positive work record.

This decision applies only to the narrow facts and circumstances of this case. This case is unusual in that discipline was assessed entirely upon conduct outside the workplace. Nonetheless, careful consideration of all factors in this case show it is important to avoid a rigid application of policies which results in an unjust outcome in derogation of CSR 16-20.

## VII. ORDER

- A. The Agency's dismissal of [REDACTED] on June 17, 2013, is MODIFIED to a 90-day suspension. [REDACTED] retaliation claim is DISMISSED.
- B. The Agency is ordered to restore rank and back pay retroactive to June 18, 2013,<sup>9</sup> and to restore other lost benefits<sup>10</sup> no later than two pay periods following the date of this decision.
- C. If there is a dispute about back pay, rank, or benefits, the Agency is ordered pay the undisputed amount, and to reinstate undisputed back benefits no later than two pay periods after the date of this decision. The proper remedy for the unresolved portion of back pay and/or benefits is a motion to set the matter for hearing in the Hearing Office. [In re Mestas, CSB 64-07, 61-07, 62-07, 67-07 (8/12/08)].
- D. The case file shall remain under seal in compliance with the order of the Arapahoe County District Court which sealed [REDACTED] criminal case. [Exhibit L].

DONE February 28, 2014.



Bruce A. Plotkin  
Career Service Board Hearing Officer

<sup>9</sup> minus the 90-day suspension period in accordance with this decision.

<sup>10</sup> See note #9.

**NOTICE OF RIGHT TO FILE PETITION FOR REVIEW**

A party may petition the Career Service Board for review of this decision in accordance with the requirements of CSR § 19-60 et seq. within fifteen calendar days after the date of mailing of the Hearing Officer's decision, as stated in the certificate of mailing below. The Career Service Rules are available at [www.denvergov.org/csa/career service rules](http://www.denvergov.org/csa/career%20service%20rules).

All petitions for review must be filed by mail, hand delivery, or fax as follows:

BY MAIL OR PERSONAL DELIVERY:

Career Service Board  
c/o Employee Relations  
201 W. Colfax Avenue, Dept. 412  
Denver CO 80202

BY FAX:

(720) 913-5720

Fax transmissions of more than ten pages will not be accepted.