DECISION AND ORDER

IN THE MATTER OF THE APPEAL OF:

TRACI RHODES, Appellant,

vs.

DENVER DEPARTMENT OF SAFETY, 9-1-1 COMMUNICATIONS,
and the City and County of Denver, a municipal corporation, Agency.

The hearing in this appeal was held on June 23, 2014 before Hearing Officer Valerie McNaughton. Appellant represented herself, and Assistant City Attorney Kristen Merrick represented the Agency in the appeal. The Agency called Ernest Franssen, Carl Simpson and Appellant. Appellant presented the testimony of Jessica Fischman.

I. STATEMENT OF THE APPEAL

Appellant Traci Rhodes has appealed her April 9, 2014 termination, and also alleged sex discrimination. At the beginning of the hearing, Appellant withdrew her discrimination claim. The parties stipulated to Agency Exhibits 1, 2, 4, 10, 11, 13 - 15, 18 - 22, and 26, as well as Appellant's Exhibits C - F, L and M. At hearing, the following exhibits were admitted: Agency Exhibits 3, 7, 9, and 17, and Appellant's Exhibits A, B, I, S and T.

II. ISSUES FOR HEARING

The issues in this appeal are whether the Agency established by a preponderance of the evidence that Appellant's conduct violated the Career Service Rules (CSR) alleged in the disciplinary letter, and whether termination was a reasonable penalty for the proven violations.

III. FINDINGS OF FACT

Appellant Traci Rhodes was hired in Sept. 2008 as an Operator for the Denver 9-1-1 Communications Center, where she received eight weeks of classroom training, eight weeks on-the-job training and ten weeks of coaching. Appellant was promoted to Police Dispatcher in 2009, and successfully completed another eight weeks of classroom training and twelve weeks of on-the-job training. In that position, Appellant dispatched police in response to reported emergencies in accordance with the Denver 9-1-1 Standard Operating Procedure (SOP) Manual. (Exhs. 11, 13 - 15, 18.) 9-1-1 SOPs are updated as needed by a team that meets weekly to discuss recent incidents. (Fischman, 8:54 am.) Dispatchers are sent a quarterly spreadsheet of new policies, and are required to acknowledge their responsibility to read and adhere to all SOPs. Appellant signed that acknowledgment most recently on March 19, 2013. (Exh. 17.)
Between 2011 and 2013, Appellant was disciplined six times and counseled three times for violations of dispatch policies. In December 2011, she was placed on a 90-day Performance Improvement Plan (PIP) for issues with quality assurance and standardized dispatch protocol. (Exhs. 3, 4.)

On March 12, 2014, Appellant was served with a pre-disciplinary letter based on her alleged mishandling of three dispatch calls on Oct. 31, 2013, and a failure to monitor her channel for over three minutes on Feb. 5, 2014. (Exh. 26.) After the pre-disciplinary meeting, Appellant was terminated from her position. (Exh. 1.)

1. Call from the Mayor's Office

The facts underlying this disciplinary action are largely undisputed. On Oct. 31, 2014 at 16:42:12 hours, Appellant opened an incident to read in the VisiNet Browser, the police communication network. The incident notes showed that the Director of the Mayor's Office called to request an officer to report a trespass or burglary that may have occurred three hours earlier at the Mayor's Office. The caller requested follow-up contact. Appellant entered and exited the incident report five times within three minutes, but did not assign any of the available mobile units, one of whom was a corporal. (Appellant, 1:01 pm: Exh. 1-5.) Deputy Chief Klee called Operations Supervisor Heywood to complain about the thirty-five minute delay in responding to the call. Heywood ordered Appellant to send a unit to the Mayor's Office, and Appellant dispatched unit 625A at 17:18:12. (Exh. 1-6.)

At the pre-disciplinary meeting, Appellant stated that she did not dispatch a unit because the suspect, an employee discharged earlier that day, was no longer in the area, and also because the Mayor's office waited three hours to report the theft. (Exh. 19.) She viewed the matter as a Priority 6 "cold call." (Exhs. 20-1, B.) Appellant was reluctant to dispatch a corporal because sergeants sometimes complain about using higher rank officers for service calls. "I just followed the leader." (Exh. 19.) Appellant's supervisor Ernest Franssen testified that he advised all dispatch personnel a few months before this incident that corporals were to be assigned to service when available. (Franssen, 9:12 am: Exh. 21-10.)

Appellant admitted at hearing that that she received the July memo, and that the corporal in unit 615A was available for dispatch. She agreed that her failure to dispatch resources to cover the call was a violation of Agency policy. Appellant stated that she did fail to call back the reporting party at 30 minutes, as required by the SOP. She testified that it was surprisingly quiet for a Halloween night, and that her inaction was "probably a simple oversight." (Appellant, 1:10 pm: Exh. 20-2.) Appellant noted that SOP 306.03 was not amended until April 2014 to clarify that corporals were included as units available for dispatch. (Exh. 15-2.) She also argued that this complaint was an attempt to give political officials preferential treatment, as illustrated by the later amendment to the Dispatcher Reference Guide that requires dispatchers to notify a supervisor of a call for police help made by a dignitary. (Exh. I.) That provision was removed shortly thereafter. (Exh. J.)

There is no dispute that the call from the Mayor's Office was at least a priority 6 call, which is a theft not in progress. (Exh. B.) All calls from priority 3 to 99 have the same allocation of resources: the dispatcher must assign a unit to respond. (Exh. C, SOP 306.03.1.b.) Therefore, this priority 6 call should have resulted in assignment of one of the units Appellant admits were available, regardless of the source of the call. (Exh. 1-7.)
2. Unwanted Person Incident

The next incident began with a call from an employee at the Curious Theatre Company at 1080 Acoma Street, who reported that a homeless man had been verbally aggressive with her and was now setting up camp in the trees at the back of theater property. Appellant entered the employee’s name and her request for follow-up contact at 16:21:59, and aired a request for assistance. Eighteen minutes later, Unit 611A aired that he could respond. Appellant placed 611A in service on that call, but did not assign any of three other available units to serve as the second car, a requirement for an unwanted person report. (Exh. 1-4., Master Incident Guide, Public Disturbance Series.)

The pre-disciplinary letter alleged that Appellant’s initial dispatch failed to use the established protocol of stating the address of the relevant location, followed immediately by the nature code or description of incident, as required by the Dispatcher Incident Guide. It stated also that Appellant failed to communicate that the homeless man had been verbally aggressive with the female employee, information deemed necessary for the responding unit to assess the situation and determine an appropriate strategy. Finally, Appellant failed to dispatch a second unit, as required by the Incident Guide. (Exh. 21-9.)

At the pre-disciplinary meeting, Appellant stated that her failure to use standardized dispatch policy was "a personal preference that is against policy", and that 75% of the time she uses the standard dispatch form. (Exhs. 19, 20-2.) She had assumed the employee was no longer with the suspect because the report said the man "had been" verbal with the employee, using the past tense. Appellant also believed that the employee "didn’t want contact". (Exh. 20-3.) However, a note entered at 16:21:59 stated "the caller wanted contact if necessary." (Exh. 1-8.) Appellant did not specifically respond to the allegation that she failed to dispatch a second car. At her pre-disciplinary meeting, Appellant admitted that she could use a refresher on Agency polices, and was willing to be on a second PIP to ensure that she is following policy. (Exh. 19.) She conceded at hearing that she should have provided a cover car for the responding unit, and that she did not inform the officer that the man had been verbally aggressive. (Appellant, 1:15 pm.)

3. McDonald's weapons incident

Finally on that day, an alarm went off at the McDonald's Restaurant at 16th and Broadway. Based on a report that there were two armed males inside the restaurant, Appellant aired a call to all units. Unit 632A responded that he was at the scene. Appellant then aired a general call for a cover unit, despite having two units, 615A and 620A, available for dispatch. One minute later, Unit 615A asked Appellant to add him to the weapons incident. Appellant acknowledged the call, but did not assign 615A to the call, contrary to policy and procedure. This omission could have compromised the safety of 615A, who was on the scene without the knowledge of the other officers. Appellant admitted she had not added 615A, and testified that this may have been a typographical error.

4. Channel Two

The last incident occurred on Feb. 5, 2014. At 14:21, Appellant was assigned to cover Channel Two. Two officers called in several times between 14:21 and 14:24, but there was no response. Appellant acknowledged at the pre-disciplinary meeting that she had leaned into the console, and as a result her headset jack became disconnected from the P10 radio unit.
She admitted that it had happened often in the past, and that "three out of four times when you lean up, the thing is going to come undone." This time, the jack loosened just enough that she did not hear the radio traffic. (Exh. 19.)

5. Decision to terminate

In support of her challenge to the termination, Appellant presented copies of audits of her dispatch work dated from April 2013 to March 2014 with ratings of good to excellent. (Exh. L.) Appellant's co-worker and friend Jessica Fischman testified that calls can hold more than 30 minutes on busy nights, and sometimes as long as 90 minutes. Calls can disappear while on hold when there are higher priority calls being handled. Ms. Fischman has dispatched only one unit on a call requiring two if there are no other units available. Sergeants have yelled at her on the air in an attempt to overrule dispatch policy. In response, Ms. Fischman documents the incident, contacts her supervisor and follows policy. (Fischman, 1:28 pm.) During the Agency's rebuttal, Dispatch Manager Franssen admitted that the job is stressful, and officers and sergeants have yelled at dispatchers. When that occurs, Franssen gets the details from the dispatchers and then presents a complaint to the Deputy Chief. Sometimes that results in an apology to the dispatcher, but it also clarifies 9-1-1 Communications policies for the patrol officers affected by them. (Franssen, 1:50 pm.)

9-1-1 Director Carl Simpson made the disciplinary decision after reviewing Appellant's training, personnel and disciplinary files, as well as several months of quality assurance audits, many of which were presented by Appellant. Simpson considered Appellant's written and oral statements during the pre-disciplinary meeting in an effort to determine the appropriate level of discipline for the admitted procedural violations, with an eye towards what would change the behavior. He noted that Appellant described her dispatching protocol as "a personal preference", despite its importance in maintaining quality control. Her frequent past discipline and recent suspension for similar conduct made it a choice between a lengthier suspension and termination, in Simpson's view.

Dispatch Manager Ernest Franssen testified that he recommended termination based on Appellant's history of not responding to citizen needs by timely dispatches, and her failure to improve after extensive remedial training as well as discipline. He also noted that she had not expressed a willingness to familiarize herself with division policies or comply with them. During the pre-disciplinary meeting for the December, 2013 suspension, Appellant stated that she was unaware of the relevant policy, and had not read it. In response, Appellant was granted twelve hours of overtime in order to read the SOPs. (Franssen, 9:42; Appellant 12:59 pm.) In spite of that overtime, two months later Appellant failed to continuously monitor her assigned channel in violation of SOP 302.03.

Appellant's last two performance reviews rated her below expectations based on a failing rating in customer service, a factor noted by the decision-maker. (Exhs. 7, 9.) Simpson considered that in 2012 Appellant had successfully completed a 90-day PIP to improve her adherence to dispatch standards and procedures, thereby demonstrating her ability to perform her duties. (Exhs. 3, 4.) He prepared a graph of Appellant's quality assurance audit scores from July, 2013 to March, 2014. The audit results demonstrated to Simpson that Appellant could do the job when under scrutiny, but that she did not maintain satisfactory performance when that scrutiny ended. He decided that it was a question of "will, not skill." (Simpson, 11:30 am.) He ultimately concluded that Appellant was unlikely to improve her compliance with dispatch rules on anything but a temporary basis, and that no level of discipline short of termination would meet the purposes of discipline under the Career Service Rules.
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 termination was within the range of discipline that can be imposed under the circumstances. In re Carter, CSB 87-09, 2 (7/1/2010.)

A. VIOLATION OF DISCIPLINARY RULES

1. Neglect of duty, CSR § 16-60 A.

In order to prove a violation of this rule, an agency must prove an employee failed to perform a job duty she knew she was obligated to perform. In re Serna, CSB 39-12, 3-4 (2/28/14), citing In re Compos, CSB 56-08 (6/18/09).

The Agency argues that Appellant failed to perform her job duty of dispatching in the above instances. However, in all four cases, Appellant did not refuse or fail to take any action after a call to 9-1-1. Rather, the actions she took were not in full conformity with the Agency's policies, procedures or training. Thus, the Agency failed to prove that Appellant neglected her duty to perform the dispatch function based on the facts asserted in the disciplinary letter.

2. Carelessness in the performance of duties, CSR § 16-60 B.

Carelessness is proven by work performance conducted in an unsatisfactory manner. In re Gomez, CSA 02-12, 3 (5/14/12). Here, the Agency claims that Appellant violated this rule because she performed her dispatch duties in an unsatisfactory manner.

As to the call from the Mayor's Office, the Agency claims that Appellant violated three procedures: failing to consider that the call may involve a possible security breach, failing to dispatch officers, and failing to call the reporting party back within 30 minutes. (Exhs. 13 - 15.) Appellant admitted that she did not dispatch an available corporal, and missed the 30-minute call-back deadline because she was not watching her time. (Exh. 19.) She conceded at hearing that it was a slow night, and so the delay was not justifiable based on the need to handle higher priority calls. I find that Appellant was careless in the manner in which she handled this call.

The Agency next argues that Appellant was careless during the unwanted person incident in several respects: 1) failing to air the nature code right after the address; 2) omitting critical information from the broadcast; and 3) failing to dispatch a second unit. Appellant characterizes her style of dispatch a personal preference, while admitting it is against policy. (Exhs. 19, 20-2.) She testified that she added a note in VisiNet that the man had been verbally aggressive with the employee, but did not read it over the air. The SOP requiring broadcast is intended to ensure that an officer need not stop to read the report, but can proceed to the scene with the information needed to understand the circumstances. (Appellant, 1:15 pm; Exh. 13-2.)

During this incident Appellant made several assumptions, including that the employee was safe inside and did not want a return call. These assumptions caused Appellant to assign only one vehicle to the call, in violation of SOP 306.03.1 and the Master Incident Guide. (Exh. 1-
4.) Appellant's actions during this dispatch displayed a lack of focus on the facts presented and a failure to apply the known rules to that situation. The evidence proved that Appellant was careless in her performance of this dispatch call.

During the McDonald's weapons incident, Appellant conceded that she failed to assign available units to the call, but instead aired the call to all units. More seriously, Appellant orally assigned Unit 615A to the incident, but failed to add him to the report or inform the other units of his presence at the scene. She therefore failed to advise officers of critical information and to add incident comments to the report, potentially endangering officers responding to a report of two armed males at the restaurant. Her actions showed at very least a careless performance of her important duties.

Finally, the Agency alleges that Appellant was careless in failing to monitor Channel Two for about three minutes on Feb. 5, 2014. Appellant was at the console with headphones on, but leaned against it, unseating the jack from the connector. This result cannot be viewed as unexpected. Appellant testified that in her experience, this type of movement has pulled the jack completely out of the console 75% of the time. Here, the headphone jack simply loosened, but nonetheless broke the circuit. In any event, Appellant failed to check the jack's seating for a full three minutes, leaving the police channel unmonitored and missing several calls. During that time, Appellant failed to notice that there was no sound coming into her headphones, a fact that should have alerted her to check the jack, even if her recent movement had not. Her failure to check the contact during three minutes of dead air was careless, in violation of this rule.

3. Standards of performance, CSR § 16-60 K

A violation of this rule requires proof that an agency established a performance standard, clearly communicated it to the employee, and the employee failed to meet that standard. In re Rodriguez, CSA 12-10, 9 (10/22/10). The Agency quotes the job specifications of a Police Dispatcher, which require communication with patrol units on police emergencies. Since job specifications are necessarily general in their descriptions of job duties, they are generally not enforceable as performance standards under this rule. See In re Gutierrez, CSA 65-11, 6 (8/28/12). I find the job specifications did not provide notice to Appellant of the specific performance standards at issue or the measures used to enforce compliance, as is necessary to prove a violation of this rule. See In re Leslie, CSA 10-11, 11 (12/5/11).

4. Failure to observe departmental rules, CSR § 16-60 L

The Agency claims that Appellant violated several of its dispatch policies during the above incidents.

Standard Operating Procedure (SOP) 301 sets forth specific dispatcher responsibilities. (Exh. 11.) Appellant is alleged to have failed to obey two of them during the unwanted person incident: omitting the critical information that the person had been verbally aggressive, and failing to accurately dispatch. SOP 301.03.5; 301.03.7. Based on Appellant's admission that she failed to convey this information to the dispatched unit, I find that Appellant violated 301.03.5. As to the latter standard, the evidence does not support a finding that Appellant's dispatch was inaccurate, only that it was provided out of order. The Agency proved that Appellant failed to advise the responding officers in the McDonald's incident that another officer was on the scene, in violation of 301.03.5. On Feb. 5th, Appellant also violated 301.03 by failing to monitor radio traffic for three minutes.
SOP 302.03.5 requires a dispatcher to set the console to monitor all required channels. As found above, Appellant failed to do that when she left Channel Two unmonitored for three minutes after inadvertently breaking the circuit to her headphones.

SOP 303.03 mandates that a dispatcher "assess each incident and recognize its importance by viewing it through the customer's perspective." (Exh. 13-1.) Appellant failed to recognize the dangers of a security breach to the Mayor's Office by her decision to treat the matter as a low priority, and neither dispatch units nor call the reporting party back in 30 minutes. Her own incorrect assumptions about the unwanted person incident led her to decide not to dispatch a cover unit, as required by the Master Incident Guide. Appellant's failure to add a responding officer to the McDonald's incident did not reflect a view of the incident through the perspective of an important customer, the officer himself, who was placed in significant danger as a result of this omission.

SOP 303.05 obliges a dispatcher to prioritize calls in a certain manner, including use of a standardized order of information and conveying all critical information. Appellant failed to state the nature code directly after the address during the unwanted person report, in violation of 303.05.1. She also failed to include the important circumstance that the homeless man had been verbally aggressive with the employee. Appellant opined that the man "probably told her to leave (him) alone ... most people leave after you threaten to call the police." Thus, Appellant told Unit 611A that "she just wants him moved along." (Exh. 1-9.) An officer given only that information would not have all the relevant facts prior to his arrival on the scene, compromising his ability to provide an effective response. Likewise, Appellant's failure to add Unit 615A to the McDonald's incident, adversely affected the safety of all responding officers.

As stated above, Appellant violated SOP 304.03 during the unwanted person incident when she did not air the nature code immediately after the address. She neglected to make a follow-up call at 30 minutes to the Mayor's Office that same day, in violation of SOP 304.08.

SOP 306.03 mandates that a dispatcher assign incidents for service, and make follow-up calls every 30 minutes of hold time. Appellant failed to assign any police resources to the Mayor's Office incident, and did not assign a second unit to the unwanted person call, in violation of this procedure.

Appellant's conduct during the three dispatches was also controlled by the Dispatcher Incident Guide, which requires dispatchers to assign two officers to an unwanted person call, and broadcast the nature code immediately after the address. Appellant violated both of these directives during the unwanted person incident.

5. Conduct prejudicial to the department or city, CSR § 16-60 Z

A violation of this rule is proven by conduct that causes actual harm to an agency mission, or to the City's reputation or integrity. In re Romero, CSA 01-12, 9 (4/17/12). The Agency presented no proof that any of Appellant's actions caused actual harm to the mission of 9-1-1 Communications or the Department of Safety. While several officer calls went unanswered on Feb. 5, 2014, the Agency failed to prove that any work went undone that affected the job of the Safety Department. There was no evidence that Appellant's three dispatch calls on Oct. 31, 2013 caused harm to the city or agency, or affected the city's reputation or integrity. Therefore, this violation has not been established.
B. DEGREE OF PENALTY

The evidence at hearing supported the Agency's findings that Appellant was careless in the performance of her duties, and violated several well-known and unambiguous policies. 9-1-1 Director Simpson reviewed all relevant performance documents, and considered the factors required by CSR § 19-20. His demeanor at hearing indicated a sincere interest in determining whether any penalty short of termination would achieve the needed change in performance. He reluctantly concluded that it would not.

I have considered Appellant's statements at the pre-disciplinary meeting and her testimony. Appellant repeatedly referred to her performance as caused by oversight, typographical error, or personal preference. She minimized the policy violations by stating that "No one's perfect ... I have good days and bad days, ups and downs." When confronted with the contradiction between what is called for by policy and the demands of sergeants, she stated that she "followed the leader ... to keep the peace." In contrast, her co-worker and friend Jessica Fischman chose to follow policy under similar circumstances, while acknowledging how difficult it is to be the subject of an angry outburst. On the totality of the evidence, I cannot conclude that the Agency went beyond the range of reasonable discipline in its determination that dismissal was the appropriate penalty for the proven rule violations.

Order

Based on the foregoing findings of fact and conclusions of law, it is hereby ordered that the Agency's dismissal dated April 9, 2014 is AFFIRMED.

Dated this July 25, 2014.

Valerie McNaughton
Career Service Hearing Officer