HEARING OFFICER, CAREER SERVICE BOARD
CITY AND COUNTY OF DENVER, COLORADO
Consolidated Appeal Nos. 40-10, 48-10

DECISION AND ORDER

IN THE MATTER OF THE APPEAL OF:

SHEILA ROBERTS, Appellant,

vs.

DENVER COUNTY COURT,
and the City and County of Denver, a municipal corporation, Agency.

The hearing in this appeal was held on September 28 and 29, 2010 before Hearing Officer Valerie McNaughton. Appellant was present throughout the hearing and represented by Hugh Pixler, Esq. The Agency was represented by Assistant City Attorney Franklin Nachman, and Operational Supervisor Mae Rodriguez served as the Agency's advisory witness. Having considered the evidence and arguments of the parties, the Hearing Officer makes the following findings of fact and conclusions of law, and enters the following order:

I. STATEMENT OF THE APPEAL

Appellant Sheila Roberts, a Judicial Assistant II with Denver County Court (Agency), challenges two suspensions in these consolidated appeals. CSA No. 40-10 is an appeal of a five-day suspension dated June 10, 2010. CSA No. 48-10 seeks relief from a fifteen-day suspension imposed July 21, 2010, and also claims the decision occurred as a result of disability discrimination. At the request of both parties, the appeals were consolidated for hearing on July 27, 2010.

The parties stipulated to the admissibility of Agency Exhibits 1, 2, 4-9, 11, 13-25, 32, 34-38, 42, 46-48, and Appellant's Exhibits B, C, and G. The parties stipulated to the authenticity of Agency Exhibits 26, 29-31, 43-45, and Appellant's Exhibit A. Agency Exhibits 3, 10, 12, 27-30, 33, 39, 40, 41-2 to 41-9, 44, and Appellant's Exhibit A were admitted during the hearing. The Agency withdrew Exhibit 41-1 during the hearing.

II. ISSUES

The issues in this appeal are as follows:

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

2) Did the Agency establish that a five-day suspension and a fifteen-day suspension were within the range of penalties that could be imposed upon Appellant by a reasonable administrator for the violations proven in each disciplinary letter?

3) Was the fifteen-day suspension imposed based on disability discrimination?

III. FINDINGS OF FACT

Appellant was hired by the Denver County Court (DCC) in January 1991, and has worked as a Judicial Assistant II in the Civil Division at the Denver County Court since March 2008. Her duties include serving customers, processing pleadings and other documents, and handling the cashier desk. [Exhibit 23-2.]

Denver County Court has used a computerized Case Management System (CMS) since 1992. The LexisNexis File and Serve electronic filing (e-filing) system works in conjunction with CMS to record all pleadings filed and actions taken in civil cases. In April 2009, Denver County Court implemented mandatory e-filing of pleadings for collection and eviction actions. The week before e-filing was to go live, LexisNexis provided four hours of hands-on classroom training for court employees, including Appellant. LexisNexis' Project Manager for Colorado Sarah Delano, who provided the instruction, recalled that Appellant asked the normal sort of questions during the training. Ms. Delano remained at the County Court for an additional week to observe and answer employee questions that emerged as they used the system for real cases. Operations Supervisor Mae Rodriguez and Civil Division Supervisor Rita Trujillo also made themselves available for questions. Each employee's share drive has an icon for the Resource Center, which contains the training and user guides for future reference. Further instructions were emailed to all civil clerks, including Appellant. [Testimony of Ms. Delano, 9/28/10, 9:04 am; Exhs. 18 – 20, 47, 48.]

Appellant recalled seeing the user guide during training, and acknowledged receiving copies of Exhs. 18 and 19. Appellant testified that she did not receive written copies of the training guides, and would have learned better if she had. [Appellant, 9/29/10, 9:44 am.] Appellant did not ask her supervisors for any additional LexisNexis training, although Ms. Rodriguez offered to provide it. [Testimony of Ms. Trujillo, 9/28/10, 9:52 am; Ms. Rodriguez, 9/28/10, 1:14 pm.] Appellant did ask for and receive 45 minutes of training from a co-worker on processing transcripts of judgment, after two errors she made in February were discovered. [Exhs. 4, 5.]

Management decided that employee e-filing errors would not be counted against employees for discipline or performance evaluations for the rest of 2009, but would be employed only to train employees. [Ms. Trujillo, 9/28/10, 9:52 am; Ms. Rodriguez, 9/28/10, 1:24 pm.]

Appellant was out on family medical leave for approximately six weeks at the end of 2009, and returned without medical restrictions. At her request, she was permitted to work in the back office for a time rather than at the front counter because she was using a portable oxygen tank. [Ms. Rodriguez, 9/28/10, 2:15 pm.] All Judicial Assistants rotated weekly to counter duty, records, cashier cage, and e-filing assignments, but all were required to process e-filings. [Ms. Rodriguez, 9/28/10, 2:18 pm; Exh. 22.]

In January 2010, Ms. Rodriguez started to document each employee's e-filing errors for purposes of evaluating performance against standards. Attorneys and employees reported several errors made by Appellant to Ms. Rodriguez. [Ms. Rodriguez, 9/28/10, 1:37, 1:50 pm.]

A. Five-day Suspension

Appellant's Performance Enhancement Program Report (PEPR) from Oct. 2009 to Oct. 2010, restricts her to twelve filing errors a year in order to be rated successful. [Exh. A-10.] On May 24, 2010, the Agency gave Appellant a pre-disciplinary letter based on fourteen errors during the first six months of the rating period. [Exh. 24.] At the June 3, 2010 pre-disciplinary meeting, Appellant appeared with her representative, Hugh Pixler, Esq., before Deputy Court Administrator Terrie Cooke, Ms. Rodriguez, Agency HR Director Suzanne Razook, and Division Supervisor Rita Trujillo. On June 10, 2010, the Agency imposed a five-day suspension [Exh. 23] based on the following asserted performance errors and Appellant's disciplinary history:

1. On Jan. 13, 2010, Appellant accepted a new case for filing, despite the fact that necessary party information was not presented. Another clerk had rejected the same case earlier that day based on the lack of party information. [Ms. Rodriguez, 9/28/10, 1:26 pm.] As a result, the case information was not transferred into the Case Management System, the LexisNexis register account did not balance, and the missing data had to be manually entered into the electronic version of the file. [Exh. 1.] At hearing, Appellant admitted she made this error, but added that she never made the same mistake again after Ms. Rodriguez discussed the matter with her. [Appellant, 9/29/10, 10:00 am.]

2. On Jan. 26, 2010, Appellant disposed of a case by vacating a citation instead of vacating the hearing date, as requested in the plaintiff's motion. Ruling on dispositive motions is beyond the authority of a Judicial Assistant II. [Ms. Rodriguez, 9/28/10, 1:34 pm; Exh. 2.] Appellant conceded her action was in error, but explained she had never previously handled an e-filed motion to vacate a hearing date. [Appellant, 9/29/10, 10:02 am.]

3. On Jan. 21, 2010, Appellant issued a blank Writ of Restitution in LexisNexis in response to a party's request for a Writ of Restitution. [Exh. 6-3; Ms. Trujillo, 9/28/10, 10:24 am.] LexisNexis notified Appellant and Court Administrator Matt McConville of the error. [Exh. 6.] Appellant admitted taking this action, but stated that she brought the form up in the CMS system because LexisNexis was down, and thought from a pop-up message that she had taken care of the matter. [Appellant, 9/29/10, 10:05 am.]

4. On Dec. 21, 2009, Appellant accepted a new case with a return time of 8:15 pm instead of 8:15 am. As a result, the case was not scheduled on the docket for the requested return day. The attorney arrived at 8:15 am, learned the case was not on the docket, and worked with the courtroom clerk to have the matter heard in spite of the error. [Exh. 7.] Appellant stipulated that she was responsible for this error.

5. On Feb. 10, 2010, Appellant issued a Transcript of Judgment (TOJ) that a co-worker had started, attaching it as a PDF with the incorrect case number and parties. [Exh. 5-3, 5-4.] Appellant admitted she attached the wrong TOJ to the email. [Appellant, 9/29/10, 10:08 am.]

6. That same day, Appellant created a new Transcript of Judgment with the incorrect case number and party names, despite an attached "memo to clerk" asking for issuance of the prepared Transcript of Judgment which had been approved in advance by Ms. Trujillo. [Exh. 4-2 – 4-4.] Appellant admitted that she failed to process the pleading under the correct party names. [Appellant, 9/29/10, 10:11 am.]

7. On Feb. 8, 2010, Appellant accepted a Writ of Restitution, but failed to forward it to the judge's in-box, delaying the plaintiff's possession of his property. [Exh. 8.] Appellant stipulated that she made this error.

8. On Mar. 8, 2010, Appellant incorrectly rejected an attorney's request for a Writ of Restitution based on a stay of execution, contrary to court policy permitting issuance where there is a Judgment for Possession. The mistake delayed repossession by four days. [Exh. 9-1, 9-2; Ms. Rodriguez, 9/28/10, 1:48 pm.] Appellant admitted this error, but stated it caused no delay in repossession because it was corrected the same day. [Appellant, 9/29/10, 10:14 am.]

9. On Mar. 2, 2010, Appellant processed a garnishment, but issued it as an alias summons. When the attorney called to have the Clerk's Office correct the error, Appellant re-issued it using the incorrect financial code, thus charging the attorney a second fee and causing LexisNexis to be out of balance. A refund voucher was required to correct the error. [Exh. 11.] Appellant stipulated that she committed these mistakes.

10. On Apr. 19, 2010, Appellant accepted a Transcript of Judgment request with the wrong financial code, which prevented the paid fee from being receipted, and caused the LexisNexis account to be out of balance. [Exhs. 12-1; 14-3, 14-5, 14-6; Ms. Rodriguez, 9/28/10, 2:02 pm.] Appellant conceded she used the wrong finance code. [Appellant, 9/29/10, 10:17 am.]

11. Appellant erroneously issued a Writ of Restitution as a Writ of Continuing Garnishment on Apr. 21, 2010, delaying the plaintiff's possession of his property. [Exh. 15.] Appellant both stipulated and testified that this was an error on her part. [Appellant, 9/29/10, 10:17 am.]

12. On Mar. 11, 2010, Appellant accepted a Notice of Hearing to Enter Judgment, and did not enter the return date into the Case Management System, resulting in its omission from the docket. The courtroom clerk corrected the error after a call from the attorney about the oversight. [Exh. 13-3 to 13-5; Ms. Rodriguez, 9/28/10, 1:59 pm.] Appellant admitted that she used the wrong finance code. [Appellant, 9/29/10, 10:17 am.]

13. On Apr. 20, 2010, Appellant accepted a defendant's Answer the day before the return date, but did not scan it until nine days later. As a result, default judgment entered against the defendant, which had to be vacated by an order from the Judge. [Ms. Trujillo, 9/28/10, 10:33 am.] CMS and Lexis both show that the Answer was filed on Apr. 20 or 21, and that the return date was Apr. 22nd. The Answer could not be located until Apr. 29th, at which time it was belatedly scanned into the system. [Exh. 16.]

When Court Division Supervisor Rita Trujillo brought this error to Appellant's attention, the latter told her that the cashier had not returned the Answer to her for scanning. Ms. Trujillo testified that Judicial Assistants are trained to scan an Answer as soon as they receive it, before it is taken to the cashier for payment of the filing fee. [Ms. Trujillo, 9/28/10, 10:33 am.]

Appellant testified that this was not her error. She recalled that the Defendant came in and attempted to file his Answer with her. Appellant ran his name through LexisNexis, and told him the filing fee would be $82. When he said he did not have the money, Appellant did not accept the Answer for filing, but simply returned it to him. Since the procedure requires immediate scanning of only those Answers that are actually tendered for filing, Appellant claims that her actions were not careless or otherwise improper. [Appellant, 9/29/10, 10:20 am.]

14. On Apr. 23, 2010, Appellant accepted an Alias Summons as a new Summons, causing the attorney to be charged a second filing fee and requiring the issuance of a refund. [Exh. 17; Ms. Trujillo, 9/28/10, 2:10 pm.] Appellant admitted that she mistakenly hit the "accept" option, which recorded the filing as an original and not an Alias Summon, and that the attorney was charged twice as a result of this. Appellant added in mitigation that she herself brought the matter to Ms. Rodriguez' attention. [Appellant, 9/29/10, 10:22 am.]

During the pre-disciplinary meeting held on June 3, 2010, Appellant's attorney informed the disciplinary panel that Appellant was taking Coumadin, a blood thinner, which was causing her issues. On Appellant's behalf, he requested initiation of the interactive process to determine the availability of reasonable accommodations under CSR § 5-84. Ms. Rodriguez testified that Appellant did not request additional training or any other specific accommodation at that meeting. [Ms. Rodriguez, 9/28/10, 2:19 pm.] Ms. Cooke confirmed that Appellant had never asked her for additional training. [Ms. Cooke, 9/28/10, 12:43 pm.]

Thereafter, the Agency rendered the disciplinary decision based on its findings that Appellant had neglected her duties, was careless, failed to comply with her supervisor's order, and failed to double-check her work, exhibiting no concern for

accuracy. [Ms. Rodriguez, 9/28/10, 2:25 pm.] The Agency also found that Appellant failed to do assigned work and to meet her PEPR standards. It determined that Appellant's errors caused extra work for others to reverse them, and delayed action in litigation matters. Finally, the Agency determined that Appellant brought disrepute on or compromised the integrity of the City by errors that delayed garnishment payments and possession of property.

Based on Appellant's extensive disciplinary history over the past six years, including four suspensions and three written reprimands, the Agency imposed a five-day suspension.

B. Fifteen-day Suspension: Appeal No. 48-10

On July 21, 2010, Appellant received a fifteen-day suspension [Exh. 32] for the following performance deficiencies and misconduct during May and June:

1. On April 28, 2010, Appellant accepted a Writ of Garnishment but failed to forward it to Clerk of Court Matt McConville's in-box for issuance back to the attorney, contrary to the training provided by LexisNexis. This caused a 22-day delay in issuing the order returning possession of the property to the claimant. [Exhs. 20, 33, 34; Ms. Trujillo, 9/28/10, 2:54.] Appellant stipulated that she made this error.

2. On May 12, 2010, Appellant accepted a Writ of Restitution, but did not forward it to the in-box for issuance. As a result, the attorney's client was delayed in receiving possession of his property by 14 days. [Exhs. 33, 35.] Appellant responded to Ms. Trujillo, and argued at hearing, that she could not process these writs because the courtroom had not entered the disposition on the Judgment of Possession. [Appellant, 9/29/10, 10:26 am.] Appellant made contemporaneous notes of this argument as to Case Nos. 9C52692 and 09C50482. [Exh. 35-3.] However, the error in this discipline occurred on a different date about a different case: 10C58824. [Exh. 35-1, 35-2.]

3. On May 18, 2010, Appellant completed only half of the Cashier's Check-out Record form, neglecting to accurately summarize the day's receipts, and preventing the Court's Accounting Office from being able to balance the day's transactions without double-checking the entire deposit. [Exhs. 36, 44-9.] Appellant received training on the procedures of the cashier's cage in November 2008. [Ms. Rodriguez, 9/28/10, 2:55 pm; Exh. 32-5.] Appellant conceded that she did not fill out the entire form, but stated it had been 18 months since she was last in the cashier's cage. Appellant added that Ms. Rodriguez did not inform her that she would be disciplined for the error at the time they discussed it. [Appellant, 9/29/10, 10:31 am.]

4. On May 25, 2010, Appellant received an appeal bond but did not write the receipt number on the green information card, as required by the Accounting Office. In the absence of that information, the Accounting Office cannot match the case number, the payee and the payment, as is necessary in order to release the bond. [Ms. Rodriguez, 9/28/10, 2:59 pm; Exh. 37.]

5. On May 26, 2010, Appellant received another appeal bond. Appellant failed to a green information card with the deposit, or complete the "payer" and "comment" fields on the receipt. The Accounting Office requires this information in order to refund the money to the proper person. Employees were trained on this procedure prior to May 2010. [Ms. Rodriguez, 9/28/10, 3:01 pm; Exhs. 32, 38.]

As to this and the previous allegation, Appellant testified that she was trained that she only needed to put the defendant's or attorney's name on the green card. She added that Ms. Trujillo told her the error would not be counted against her because "you didn't know." [Appellant, 9/29/10, 10:34 am.] Ms. Rodriguez testified that Ms. Trujillo, who is her supervisor, would have mentioned that to her if she intended to exclude those errors from this discipline, but she did not do so. [Ms. Rodriguez, 9/28/10, 4:37 pm.]

6. On June 7, 2010, Appellant did not include a calculator tape with the money in the deposit submitted to the Accounting Office. Clerks working at the cashier's desk are trained to submit calculator tapes with their check-out records. [Ms. Rodriguez, 9/28/10, 3:05 pm; Exhs. 39, 44-2, 44-10.] Appellant conceded that the calculator tape she had prepared was never found. Appellant testified that she came in the next day and saw that the credit card tape was still in the machine. She called the accounting clerk to find out what she should do with that tape, and the accounting clerk told her she could fax it to her. "I think [Ms. Rodriguez] misunderstood me when I said I had already faxed her the credit card tape." [Appellant, 9/29/10, 10:36 am.]

7. On June 8, 2010, Appellant was absent from the cashier's cage for 35 minutes. A line of six or seven customers accumulated, and at least one complained to the security guard at the information desk. The guard went to find Appellant, who she found playing with another clerk's hair in the back office. Cashiering records show that 35 minutes elapsed between receipts from 9:13 to 9:47 am. [Ms. Rodriguez, 9/28/10, 3:13 pm; Exh. 41-2.]

Appellant explained that she went to the back office to print labels, had trouble with the machine, and waited while a co-worker attempted to fix the problem. Appellant believed she was only absent for about 15 minutes, but acknowledged she was pulling on her co-worker's hair at the time, and that she did not ring up any payments for 35 minutes. Upon her return, Appellant receipted the six customers in line within seven or eight minutes. [Appellant, 9/29/10, 12:02 pm.]

8. On June 10, 2010, Appellant's Cashier's Check-Out Record showed that her receipts balanced. However, the Accounting Office compared Appellant's money total and Check-Out Record, and discovered that Appellant was short one check for $25.00. The accounting clerk then reviewed each check against Appellant's report. She found that Appellant had entered one check on the same case twice, and incorrectly placed the money totals on the side of the form reserved for receipting totals. [Ms. Rodriguez, 9/28/10, 3:18 pm; Exh. 42-1.] Appellant testified that she had to leave early that day to return a rental car. She later found the missing $25 check, but "I didn't correct my report". [Appellant, 9/29/10, 10:40 am.]

9. On June 10, 2010, at about 4:50 pm, Ms. Rodriguez served Appellant with the five-day suspension letter. Appellant left the Cashier's Office and slammed the door behind her. As Ms. Rodriguez was assisting a customer at the counter, Appellant re-entered the Cashier's Office and stood behind Ms. Rodriguez with her arms crossed. Ms. Rodriguez asked Appellant if she was waiting for her. Appellant responded that she was. Ms. Rodriguez told Appellant she could walk with her to her office so she could lock the door, and told the customer she would return momentarily. As they walked together, Appellant told Ms. Rodriguez she had several errors on her, and asked her what she should do with them. Ms. Rodriguez responded that she could talk to Ms. Trujillo, her supervisor. Appellant continued, "You know, Mae. I don't have a problem calling the media ... [or] calling the Mayor." Ms. Rodriguez told her to do what she needed to do. Appellant added that no one but Ms. Romero knew where Ms. Rodriguez was the day before. Appellant followed Ms. Rodriguez back to the counter, and stated in the customer's presence that Ms. Rodriguez "did not like her employees", and that she was "trying to hurt everyone." Her manner was very controlled, which Ms. Rodriguez observed was different from her usual manner. Ms. Rodriguez became concerned after the customer left, and worried that Appellant may still be in the elevator. She called Ms. Cooke to report the incident. The next day, Appellant told Ms. Rodriguez that she did not recall the incident. Thereafter, Appellant never reported any work errors by Ms. Rodriguez to Ms. Trujillo. [Ms. Rodriguez, 9/28/10, 3:19 - 3:26 pm.]

Appellant denied slamming the door or threatening Ms. Rodriguez with the media, but admitted she approached Ms. Rodriguez with her arms crossed at the front counter, where "it's safe to assume there was a customer." She told Ms. Rodriguez she did not recall the incident the next day because "I didn't want to talk to her". Appellant believed that during her tenure at the County Court, her version of events "falls on deaf ears. What's the point?" [Appellant, 9/29/10, 10:46 am.] Appellant argued at hearing that her statements were not misconduct because it was after office hours when she made them.

On July 21, 2010, the Agency imposed a 15-day suspension based on its finding that Appellant failed to meet her performance standards by her commission of seven errors within the two-month period since her last discipline. It also determined that Appellant failed to maintain satisfactory relationships with co-workers on the basis of her confrontation with Ms. Rodriguez in front of a customer. The ninth cited incident was Appellant's absence from her cashier's station for 35 minutes on June 9th. The length of the suspension was influenced largely by the fact that Appellant had just completed a five-day suspension for 14 other errors. [Ms. Rodriguez, 9/28/10, 3:37 pm.]

Appellant testified that the LexisNexis errors occurred because she had less than one week of training time on the e-filing system during the period from April to December 2009. [Appellant, 9/29/10, 9:37 am.] The rotation schedules for June to December show that Appellant was assigned to LexisNexis duties for a total of seven weeks. [Exh. 22-1, 22-2.] Appellant agreed that the rotation schedule accurately showed her assignment at the beginning of those weeks, but added that it did not reflect changes made to her assignments to cover other employees' absences.

Appellant first requested reasonable accommodations for her disabilities at the June 3, 2010 pre-disciplinary meeting. Appellant has not returned to work since July 20, 2010, based on the Agency's determination that it could not grant the work accommodations Appellant requested for her medical conditions. Appellant testified that those conditions include anemia, bipolar disorder, and pulmonary embolism. Appellant testified that the side-effects of her medication – fatigue, stumbling for words, and drooling – are themselves "somewhat disabling." [Appellant, 9/29/10, 9:27 am.]

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 the discipline was within the range of discipline that can be imposed under the circumstances. In re Gustern, CSA 128-02, 20 (12/23/02); Turner v. Rossmiller, 535 P.2d 751 (Colo. App. 1975).

1. Neglect of duty under §16-60 A

Neglect of duty is a failure to heed an important work duty, resulting in significant potential or actual harm. In re Lottie, CSA 132-08, 2 (3/9/09).

Here, Appellant is charged in the second suspension with neglecting her cashier duties for 35 minutes while attempting to print labels. The Agency's evidence is twofold: a printout of Appellant's cashiering times, showing a 35-minute gap between transactions, and a customer complaint about the extended wait. [Exh. 41-2]. Appellant rebutted that evidence by her testimony that she was performing other proper duties at the time, and that she returned to the cashier's customer counter as soon as she was informed that there were customers waiting in line. In the absence of some evidence that remaining at the counter at all times is an important work duty, or that 35 minutes exceeded the maximum expected absence, the Agency failed to prove that Appellant's performance of other duties away from the counter constituted neglect.

The Agency also contends that Appellant's failure to double-check her work in numerous instances in both suspensions constituted neglect. However, the Agency did not assert specifically that double-checking one's work was ever articulated as a separate work duty for Judicial Assistants.

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

An employee is careless in violation of this rule when she performs her duties without reasonable care, resulting in potential or actual significant harm. See In re Mounjim, CSA 87-07, 5 (7/10/08).

Appellant was charged with violating this rule in both suspensions. Appellant conceded that she committed 13 work errors between Dec. 2009 and Apr. 2010, and another four errors between May and June, 2010. The Agency established that Appellant was adequately trained in her work, and could have but did not ask her supervisors for assistance when she was unclear of how to proceed. Appellant testified

generally that she asked for additional training, but did not rebut her supervisors' unanimous testimony that Appellant did not request additional training by testifying more specifically about her training requests. Appellant testified regarding a single instance that she did ask for and receive 45 minutes of training from a co-worker on processing transcripts of judgment, after two errors she made in February were discovered. Moreover, Appellant's 19 years' experience with the County Court, and her successful completion of those same tasks on numerous other occasions, contradict her argument that she needed training to correctly perform those tasks.

Appellant disputes that she committed four errors, one from the first suspension and three from the second. The Agency asserts that on Apr. 20, Appellant failed to immediately scan an Answer into LexisNexis, resulting in entry of a default judgment against a party defendant. Appellant counters that she did not accept the Apr. 20th Answer for filing, and so did not erroneously fail to scan it into the system.

Right after the incident, Ms. Rodriguez asked Appellant why the Answer had not been scanned. Appellant stated that the cashier did not return the Answer to her for scanning. At hearing, Appellant recalled the incident differently: she testified that she returned the Answer to the Defendant when he could not pay the fee. However, the records show that the Answer was filed on Apr. 20 at 10:14 am. [Exh. 16-3, 16-4.] Thus, it is more likely that Appellant's contemporaneous recollection in April was more accurate than her testimony. As a result, the Answer itself was not entered into the electronic records until Apr. 29, a week after the return date. Thus, Appellant did not follow the County Court procedure requiring that clerks scan Answers as soon as they are presented, rather than waiting for the Answer's return from the cashier after payment of the fee. Immediate scanning in compliance with procedure would have prevented misplacement of the pleading, and would have avoided a costly default judgment. I find that Appellant carelessly failed to scan the Answer into the court system, resulting in actual significant harm to the defendant, and additional work in reversing the default by judicial and court staff.

As to the second suspension, Appellant denied that she erred in not forwarding a Writ of Restitution to the Clerk's in-box for issuance on May 12th, since the court had not yet taken action on the Writ. Appellant cited her notes of a conversation with her supervisor about this matter. However, those notes relate to Case Nos. 9C52692 and 9C50482, not 10C58824, the matter at issue here. [Exhs. 35-1, 35-3.] I find that Appellant carelessly failed to forward the writ for issuance under the clear court procedure, substantially delaying restoration of the party's property.

Finally, the Agency found omissions in two of Appellant's appeal bond forms. Appellant testified that she was trained only to record the party and/or attorney's name. In fact, Appellant failed to include either the party or attorney payor, and did not respond to the allegation that she also neglected to record the receipt number or complete the comment section. [Exhs. 37, 38.] The forms clearly call for this information. In addition, 19 year's experience as a court clerk is sufficient to place Appellant on notice of the need to maintain accurate bond records in order to process repayment to the correct person or entity. I find that Appellant was careless in her

completion of these two tasks, resulting in inaccurate accounting and case records in two separate appeals.

The above mistakes demonstrate that Appellant was inattentive to the details needed to accurately complete actions assigned to her care on thirteen occasions in the first disciplinary action, and another seven instances as alleged in the second suspension, despite clear procedures and extensive work experience. I find that the Agency established that Appellant was careless in the performance of her duties with regard to both disciplinary actions.

3. Failure to do assigned work under §16-60 J

This rule is violated by proof that an employee failed to perform an assigned duty which she is capable of performing. In re Mounjim, CSA 87-07, 7 (7/10/08).

The Agency contends that Appellant failed to perform her work in violation of this rule based on the numerous errors found in her completed work noted in both suspensions. On the contrary, the evidence tends to show that Appellant performed this work inadequately. The Agency did not demonstrate that Appellant failed or refused to perform tasks she was given and was capable of completing. If this rule is given the interpretation suggested by the Agency's argument, it would prohibit the very same conduct as that covered by § 16-60 B, carelessness in the performance of duties. Such a regulatory overlap is not warranted by the clear meaning of the words, or the disciplinary scheme created by the Career Service Rules. See Andrus v. Glover Const. Co., 446 U.S. 608 (1980); 73 Am.Jur.2d Statutes § 168 (two rules on the same subject should be interpreted so as to give effect to both if possible).

4. Failure to meet established performance standards under §16-60 K

An employee is in violation of this rule if she fails to meet an established and communicated standard of performance. In re Mounjim, CSA 87-07, 8 (7/10/08.)

Here, the Agency alleges that Appellant violated her work standards to consistently provide collaborative, constructive and proactive customer service and accountability as to the first suspension, with no more than two justified complaints per year. [Exh. A-4.] The evidence shows that attorneys were required to take added measures on several occasions in order to reverse the effects of Appellant's errors. [Exhs. 2, 4 – 9, 11, 13, 15 – 17.] As a result of those errors, additional filing fees were charged, legal remedies were delayed, and, on one occasion, a default judgment was entered against a defendant who tendered a timely Answer to a lawsuit. Appellant did not deny that those complaints were justified based on her errors.

As to the second suspension, Appellant was charged with violation of the same performance standards, as well as failure to meet her standards with regard to correspondence and cashiering. The Agency established that the seven work errors over two months was a failure to provide consistent customer service, leading to four complaints by attorneys or accounting clerks. [Exhs. 34, 35, 38; Ms. Rodriguez, 9/28/10, 4:24 pm.] Appellant's failure to correctly forward writs to the Clerk of Court for issuance

on two occasions brought her correspondence mistakes to 14 within six months, in violation of her performance standard. [Exhs. 34, 35, A-9, A-10.] The second suspension also alleged four cashiering errors, fewer than the eight needed to establish a violation of this work standard. [Exhs. 36, 37, 39, 32-6, A-11.] The Agency did not allege more than one incident that adversely impacted the work environment, and so it failed to establish a violation of the standard which requires promotion of a positive working relationship within the team. [Exhs. 32-7, A-5.] The Agency proved that Appellant violated her performance standards regarding service and correspondence.

5. Failure to maintain satisfactory working relationships under §16-10 O

This section is violated by conduct that an employee knows or reasonably should know will be harmful to coworkers, other City employees, or the public, or will have a significant impact on the employee's working relationship with them using a reasonably objective standard. In re Burghardt, CSA 81-07A, 2 (8/28/08).

The Agency based this finding on Appellant's confrontation with her supervisor on June 10, 2010. Appellant denied that she threatened to call the media, as asserted by Ms. Rodriguez during her testimony. Since that allegation was not included in the disciplinary letter, I will not consider it as a part of this incident. [Exh. 32-7.] Appellant did not directly deny that she accused Ms. Rodriguez of making several errors within the hearing of a customer, but instead argued that she could not be disciplined for statements she made after work hours. Since there was a customer present during the exchange, I find that the statements were made during work hours in the office.

It was clear from Appellant's testimony that she was upset about the disciplinary letter that had just been served upon her. Appellant denied slamming the door, positing that Ms. Rodriguez could have mistaken the sound of other doors closing for the door to the Cashier's Office. That mistake is unlikely, since the door at issue was to the room they had both just left, not a door in a more distant location.

Ms. Rodriguez reacted by a concern for her physical safety based on Appellant's accusations and controlled demeanor, and immediately called her supervisor. That reaction was reasonable based on the circumstances, which included hostile statements made to a supervisor in the presence of a customer as the office was closing and the two appeared to be the only ones left. Ms. Rodriguez observed that Appellant can be aggressive. The fact that Appellant never reported any work errors to Ms. Trujillo indicates that her statements were made to demonstrate her anger over the discipline, not for the purpose of obtaining information. The next day, Appellant denied any recollection of the incident because she did not want to discuss it. As a result, the parties to the incident were deprived of the opportunity to repair the damage done by Appellant's aggressive statements. I find that Appellant's statements and conduct violated this rule because a reasonable person should know these actions would have a significant effect on her working relationship with Ms. Rodriguez.

6. Conduct prejudicial to the Agency or City under §16-60 Z

This rule establishes two independent violations: harm to the agency and harm to the city. In re Norman-Curry, CSA 28-07 and 50-08, 28 (2/27/09), *citing* In re Simpleman, CSA 31-06, 10 (10/20/06), aff'd CSB (8/2/07). To sustain an allegation of harm to the agency, an agency must prove an employee's conduct hindered the agency's effectiveness, i.e., the internal structure and means by which the agency achieves its mission. Id. The second part of this rule is violated only where there is actual injury to the city's reputation or integrity. In re Jones, CSA 88-09A, 3 (9/29/10).

The Agency contends that Appellant violated this rule because her mistakes caused delays to litigants. This does not prove those same mistakes affected the Agency's ability to achieve its mission, or that the city's reputation or integrity suffered any injury. Thus, the Agency did not establish a violation of this rule.

7. Appropriateness of Disciplinary Action

In evaluating the appropriate degree of discipline, the Agency must consider the severity of the offense, an employee's past record, and the penalty most likely to achieve compliance with the rules. In re Norman-Curry, CSA 28-07 and 50-08, 23 (2/27/09). An Agency's determination of penalty must not be disturbed unless it is clearly excessive, or based substantially upon considerations unsupported by a preponderance of the evidence. In re Owens, CSA 69-08, 8 (2/6/09), *citing* In re Mounjim, CSA 87-07, 18 (7/10/08), *affirmed on other grounds*, In re Mounjim, CSB 87-07 a (1/8/09).

The Agency established that Appellant was careless and violated two performance standards as to the first suspension. At the time, Appellant had already accumulated seven disciplinary actions, including two suspensions for gross negligence or willful neglect of duty, and a suspension for failing to comply with orders. [Exh. 23-12.] While Appellant admitted most of the 14 performance errors, she continued to assert that their seriousness was mitigated by the Agency's denial of training. On the contrary, Ms. Rodriguez testified that Appellant never told her she was struggling, and preferred to seek instructions and guidance from other employees. [Ms. Rodriguez, 9/28/10, 4:36 pm.] I find that Appellant was not denied training opportunities, but instead the errors were caused by Appellant's inattention to detail. Under the circumstances, a five-day suspension following lesser discipline for similar offenses is consistent with the principles governing progressive discipline.

The day after Appellant was served with the first disciplinary letter, Appellant failed to complete an appeal bond form. [Exh. 37.] Within the next month, Appellant made four more mistakes which had adverse consequences to parties in litigation or the Agency's accounting records, [Exhs. 35, 38, 39, 32-6], and harmed her relationship with her supervisor just after delivery of the first suspension by angrily confronting her in the presence of a customer. Under these circumstances, the Agency's conclusion that a significantly longer suspension was required to achieve compliance with the rules was not improper.

I conclude that both the five-day and fifteen-day suspensions were within the range of discipline that could be imposed by a reasonable administrator, in keeping with the goals of discipline under the Career Service Rules.

8. Disability Discrimination claim

A prima facie case of disability discrimination claim is established by proof that an employee was disabled, i.e., has a physical or mental impairment which substantially limited in a major life function, but otherwise qualified to perform the essential functions of her position with or without reasonable accommodation, and that the employer imposed an adverse employment action on the employee because of her disability. 29 USC § 706; Southeastern Community College v. Davis, 442 U.S. 397 (1979).

Appellant raised a claim in Appeal No. 48-10 that her second suspension was motivated by disability discrimination and/or her request for reasonable accommodation at the first pre-disciplinary meeting, held on June 3rd. Appellant testified that she informed those present that she is somewhat disabled by reactions to her medications for three conditions: anemia, bipolar disorder, and pulmonary embolism. [Appellant, 9/29/10, 9:34 am.]

Appellant presented no evidence from which I can find that her impairments substantially limited her from performing any major life function. See In re Vigil, CSA 110-05, 7 (3/3/06). In addition, Appellant failed to support her claim that the Agency's discipline was motivated by her request for reasonable accommodation.

V. ORDER

Based on the foregoing findings of fact and conclusions of law, the following orders are entered:

1. The Agency's suspension action dated June 10, 2010 is affirmed.

2. The Agency's suspension action dated July 21, 2010 is affirmed.

3. Appellant's disability discrimination claim is dismissed.

Dated this 15th day of November, 2010.

Valerie McNaughton
Career Service Hearing Officer