

CAREER SERVICE BOARD
CITY AND COUNTY OF DENVER, STATE OF COLORADO

Appeal No. 09-10A.

FINDINGS AND ORDER

IN THE MATTER OF THE APPEAL OF:

LAURA ROCK,

Appellant/Respondent,

vs.

DEPARTMENT OF SAFETY, DENVER POLICE DEPARTMENT, and the City and
County of Denver, a municipal corporation,

Agency/Petitioner.

This matter is before the Career Service Board on the Agency's Petition for Review. The Board has reviewed and considered the full record before it and **AFFIRMS** the Hearing Officer's Decision, dated October 5, 2010, on the grounds outlined below.

I. FINDINGS

Appellant received a 2-day suspension for violation of the Agency's attendance policy. Relying on the Board's decision in *In re Espinoza*, No. 30-05, (CSB, 8/23/06), the Hearing Officer determined that the Agency's attendance policy was inconsistent with the career service rules and therefore the Agency failed to prove violations of CSR 16-60 K., L., or S. Appellant's suspension was reversed.

During the hearing, the Agency did not dispute that Appellant was sick each time she used sick leave and Appellant never exhausted her accrued sick leave bank. Nevertheless, the Agency's attendance policy (Exhibit 12) mandates a "needs improvement" rating on an employee's PEPR for more than seven instances of unplanned sick leave, regardless of whether the use of sick leave is legitimate. Prior to her suspension, Appellant received a "needs improvement" rating for attendance on her PEPR, followed by a verbal warning and a written reprimand for calling in sick in excess of the Agency's policy.

We recognize that 911 dispatchers are essential employees whose attendance is critical to the Agency's ability to carry out its safety functions. Unscheduled absences by a dispatcher may create economic and logistical consequences ranging from overtime pay to juggling work schedules on short notice. The Agency clearly has the right to control the attendance of its employees in order to accomplish its mission. At the same time, however, its attendance policies must be consistent with the guidelines established by the career service rules. CSR 10-33 permits City employees to use their earned and accrued sick time when they are incapacitated by sickness or injury. The issue in this appeal is whether the Agency may discipline an employee for using sick time in excess of its attendance policy, but which the career service rules permit an employee to use.

We note from the record that Appellant has used an average of 85 hours of sick leave per year since 2000. In *Espinoza*, there was testimony that the employee's child suffered from a serious health condition which required her to use sick leave in excess of the agency's attendance policy. In this case, however, there was no testimony as to why Appellant has used a significant amount of sick leave consistently over the past ten years. If there were concerns that Appellant was not legitimately sick, section 1.6.1 of the attendance policy and CSR 10-44 D. permitted the Agency to require a doctor's note for each unplanned absence. However, since the new policy went into effect in 2007, the Agency has not requested a doctor's note for any of these absences, nor has it discussed with Appellant why she uses so much unplanned sick time. (Transcript, 225:23-25; 226:1-4; 230:15-18).

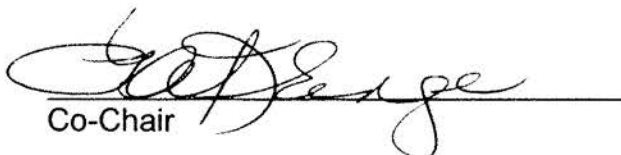
We agree with the Hearing Officer that the issues in this appeal are identical to those presented in *Espinoza*. The Agency's attendance policy does not distinguish between the legitimate use of sick leave, which is permitted by CSR 10-33, and an abuse of sick leave. Going forward, the Agency may wish to consider a more flexible approach to addressing attendance and leave management issues.

III. ORDER

IT IS THEREFORE ORDERED that the Hearing Officer's Decision of October 5, 2010, is **AFFIRMED**.

SO ORDERED by the Board on March 17, 2011, and documented this
7th day of April, 2011.

BY THE BOARD:


Co-Chair

Board members concurring:

Patti Klinge
Colleen M. Rea
Nita Henry

CERTIFICATE OF DELIVERY

I certify that I delivered a copy of the foregoing **FINDINGS AND ORDER** on
April 8, 2011, to the following:

Laura Rock, 20133 Silver Ranch Rd., Conifer, CO 80433 (via U.S. mail)


Leonard Martinez, Esq. lmartinez@denverlegalteam.com (via email)

City Attorney's Office dlefilng.litigation@denvergov.org (via email)

Ashley Kilroy, ashley.kilroy@denvergov.org (via email)
Deputy Manager of Safety

Lili Tran, lili.tran@denvergov.org (via email)
Human Resources

CSA Hearing Office CSAHearings@denvergov.org (via email)


Leon A. Duran