

DECISION

CRISTELLA RODRIGUEZ, Appellant,

v.

DENVER PARKS AND RECREATION,
and the City and County of Denver, a municipal corporation, Agency.

I. INTRODUCTION

The Appellant appeals her dismissal for alleged violations of specified Career Service Rules, and Agency rules, regulations and orders. A hearing concerning this appeal was conducted by Bruce A. Plotkin, Hearing Officer, on December 11, 2017. The Agency was represented by Assistant City Attorneys, Jessica Allen and Amanda Bauer, while the Appellant was represented by Ms. Cheryl Hutchison. Agency exhibits 1-4, 7-15 and 17 were admitted. Appellant's exhibit A was admitted. The following witnesses testified for the Agency: Mr. Isaiah Hernandez, Ms. Felicia Rodriguez, Ms. Shelly Pawlowski, and Mr. John Martinez. The Appellant testified on her own behalf and presented no other witnesses.

II. ISSUES

The following issues were presented for appeal:

- A. whether the Appellant violated Career Service Rule (CSR) 16-29 B, C, D, E, F, G, R¹, or T;
- B. if the Appellant violated one or more of the Career Services Rules, whether the Agency's decision to dismiss her conformed to the purposes of discipline under CSR 16-41.

III. FINDINGS

Appellant was employed at the City's Green Valley Ranch Recreation Center as a Recreation Center Coordinator. She began with the City in 1991 and was promoted to Recreation Center Coordinator in 2016. Her duties and responsibilities included, as pertinent here, renting space within the Center pursuant to City ordinances and Agency rules, and ensuring renters and their guests comply with all payment and comportment rules. Those rules include a requirement to prepay for private events in the recreation centers, [Pawlowski testimony], absent exceptions which did not apply here.

During the week before August 29, 2017, Isaiah Hernandez contacted Rodriguez to reserve part of the Center for his birthday party. Rodriguez, who knew Hernandez and his family, granted the reservation, but did not require a deposit or record the transaction as required by City ordinance and Agency rules.

¹ The Agency's notice of discipline also claimed Appellant engaged in unlawful secondary employment in its notice of discipline but did not pursue that basis for discipline at hearing. [ACA Jessica Allen, on-the-record statement at 8:42:10].

There was no formalized training regarding rental protocol at the Center, but City ordinances and Agency rules specify the timing and amount of payments. [Exh. 4-3, Addendum B; 2-22; Martinez testimony]. In addition, Rodriguez was trained by her supervisor, Shelly Pawlowski, how to rent space at the Center. Pawlowski observed initial inconsistencies in how Rodriguez rented space, so they had several conversations to ensure consistency in the process.

Rodriguez had been inconsistent in obtaining advance deposits as are required, so Pawlowski allowed her to continue receiving a deposit as little as two weeks before an event, but did not authorize any event without advanced payment, with one exception, a funeral. In all cases, full payment is required before a personal event is allowed. [Exh. 4-3]. Discounted rental fees require advanced authorization from the Executive Director or Deputy Executive Director.

On August 19, 2017, at 5:00 p.m., Rodriguez opened the Center for the Hernandez birthday party which lasted until just before 11:00 p.m. Rodriguez had clocked into work at 3:30 and clocked out when the party ended. [Exhibit 3]. Rodriguez, her husband, and her son, participated in the party for much of the time, including eating and drinking the victuals provided, playing volleyball for over one hour, and socializing with participants. [Exh. 7; 8; 9; Pawlowski testimony]. Guests entered employee-only areas. The emergency exit door was unlocked, and unknown individuals entered that non-public and unauthorized door.

On September 16, 2017, Hernandez went to the Center and reported he needed to pay \$325 for the party he had on August 19. Staff was unable to locate any reservation, deposit or required paperwork. Hernandez told a Center staff member that Rodriguez took his reservation, set that price after the party, and told him no deposit was required. He said Rodriguez never called him about his missing payment. [Hernandez testimony; Exh. 1; 15; 17]. The actual value of Hernandez's rental on August 19, 2017 was \$1,134. [Exhs. 2-22; 2-23].

A contemplation of discipline meeting was held on Monday, October 2, 2017. The Agency issued a notice of Dismissal to Appellant on October 10, 2017. This appeal followed timely on October 16, 2017.

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

The Agency retains the burden of persuasion to prove Rodriguez violated one or more cited sections of the Career Service Rules, and to prove its decision to dismiss Rodriguez complied with CSR 16-41. The standard by which the Agency must prove its claims is a preponderance of the evidence.

C. Career Service Rule Violations

1. **CSR 16-29 B. Theft, destruction, or neglect in the use of City property; or property or materials of any other person or entity.**

The Agency alleged Rodriguez violated this rule because she was on the clock while participating in a private party at the Center, and because she by cost the City lost revenue when she booked the Center without obtaining payment. Rodriguez denied any wrongdoing. The preponderance of the evidence revealed that: the Center is City property; prepayment for use of the Center is required and was intentionally not collected by Rodriguez; payment at the rental rates required by Agency policy and City ordinance was not collected by Rodriguez; Rodriguez was aware of the policy, and the City ordinance, but knowingly failed to apply them; and no exception to these requirements applied. Under those circumstances, the Agency proved Rodriguez engaged in the theft of City Property.

2. **CSR 16-29 C. Unauthorized operation or use of any vehicles, machines, or equipment of the City, or of any entity having a contract with the City, including, but not limited to, the unauthorized use of the internet, e-mail, or telephones.**

In order to establish a violation of this rule, the agency must prove that appellant used city equipment or facilities without permission or for a purpose not intended. *In re Dessureau*, CSA 59-07, p. 6 (1/16/08) *citing In re Oliver*, CSA 28-02, p. 21 (10/17/02); see also *In re Jones*, CSA 88-09 (5/11/10).

Based on the facts as proven above, since authorization for Hernandez to use the Center pursuant to policy and ordinance was not obtained, his use of the Center was unauthorized. Rodriguez's granting such unauthorized use of the Center was, accordingly, without permission, in violation of this rule.

In addition, since Rodriguez was on the clock during her substantial participation in the Hernandez birthday party, her own use of the Center was unauthorized, in violation of this rule.

Rodriguez's responses were unpersuasive for the same reasons stated immediately above. Her claims that she was never criticized previously for not requiring advanced deposits and giving discounts to Center volunteer coaches, such as Hernandez, were rebutted by clear Agency rules, City ordinances, and direct refutation by her first and second-level supervisors. [Pawlowski testimony; Martinez testimony; Exhs. 4-3; 2-22; 2-23; 4-8; DRMC §39-121 (11). c. 1.].

In addition, the purpose of such clearly-defined Center rental rules is to ensure proper staffing, to avoid safety and liability issues, and to operate City assets responsibly. [Martinez testimony]. Rodriguez's actions jeopardized those important purposes.

3. **CSR 16-29 D. Any act of dishonesty, which may include, but is not limited to, lying, or improperly altering or falsifying records, examination answers, or work hours.**

A violation of this rule includes any knowing misrepresentations made within the employment context. *In re Rodriguez*, CSA 12-10, p. 7 (10/22/10), *citing In re Mounjim*, CSB 87-07 (1/8/09), *reversing In re Mounjim*, CSA 87-07 (7/10/08).

The Agency claimed Rodriguez was dishonest for giving away use of the Center and for extensively participating in a party in the Center while being paid by the City. [Martinez testimony]. Rodriguez denied being dishonest. She stated she had never been trained, and

had always given discounts and waived deposits in some situations without criticism previously. She also stated she was working during the party, as well as attending some of it. Rodriguez was convincing as to her lack of intent. The evidence showed Rodriguez had previously been trained and corrected by her supervisor, yet she remained blithely ignorant of the City's and the Agency's rental requirements. Such ignorance is irresponsible, but not knowingly dishonest as required under CSR 16-29 D. [In re Stone, CSA 70-07, 9 (2/25/08)]. Appellant was also credible in her belief that her participation was not improper, although the objective evidence indicated it was grossly excessive. Based on the Agency's failure to prove Rodriguez's misuse of her authority was not knowing, this violation was not proven by a preponderance of the evidence.

4. CSR 16-29 E. Accepting, soliciting, or making a bribe, or using official position or authority for personal profit or advantage, including kickbacks.

A violation of this rule requires proof of a significant link between one's official position or authority and seeking an advantage to which one is not otherwise entitled. In re Sawyer and Sproul, CSA 33-08 and 34-08, p. 9 (1/27/09), citing In re Mergl, CSA 131-05, p. 4 (3/13/06); In re Redacted, CSA 190-03, p. 7 (2/13/06).

By participating in a private party with family members at an unpaid, or underpaid private party at the Center while the Center was under her control, Rodriguez violated this rule, according to the Agency. Her misuse of her authority was a breach of her fiduciary responsibility to collect money for the City and to manage a City facility responsibly. Unlike dishonesty, this rule does not require evidence of intent. Rodriguez's giving away use of the center in her role as Operations Coordinator, while actively participating in the use of the Center during her working hours, was using her official position and authority for personal profit, within the meaning of this rule. Procurement of money is not required under this rule. A Career Service employee's use of property acquired through her position or authority, to which use she would not otherwise be entitled, is a violation of this rule.

5. CSR 16-29 F. Failing to comply with the lawful orders of an authorized supervisor or failing to do assigned work which the employee is capable of performing.

A violation of the second part of this rule is established by (1) proof of an assigned duty (2) which the employee is capable of performing, but (3) which the employee fails to perform. In re Mounjim, CSA 87-07, p. 7 (7/10/08).

The Agency's allegation here was that Rodriguez's duty was to obtain payment for private use of the Center, so that her failure to obtain payment was a failure to perform her assigned work. Despite Rodriguez's protest that she did nothing wrong, the evidence, as stated previously, made it clear she was obligated to and capable of collecting the required deposit and fee. Her failure to do so, was a failure to perform assigned work of which she was capable, in violation of CSR 16-29 F.

Further, Rodriguez violated this rule by failing to monitor the activities of the party-goers while she was in charge of the Center on August 19, 2017. As a result, unmonitored guests opened a secured door, unknown people entered, and guests entered restricted areas, all of which was preventable, had she exercised her duty to monitor and properly staff the event.

6. CSR 16-29 G.1. Failing to meet established standards of performance including either qualitative or quantitative standards.

Appellant's 2017 Performance goals state in part:

Plans, coordinates, and oversees the operations of a recreation center by delivering recreating activities, service, and programs, provides day to day leadership, and works with staff to ensure a high-performance, customer service oriented work environment that supports the department's mission and goals and customer expectations.

The Agency alleged Rodriguez violated this rule by violating the Agency's rental policy when she failed to obtain payment for use of the Center, and when she was paid to party during work hours when she should not have been working, since no permitted event occurred. For reasons stated above, Rodriguez's responses were unpersuasive. Her failure to collect required fees, and her unauthorized participation, while paid by the City, in the birthday party event in the Center, were a detriment to the department's operations in violation of this rule.

7. CSR 16-29 R. Conduct which violates the Career Service Rules, the City Charter, the Denver Revised Municipal Code, Executive Orders, written departmental or agency regulations, policies or rules, or any other applicable legal authority.

The Denver Municipal Code states in part:

Sec. 39-3 Curfews and closures

(c) It shall be unlawful for any person, other than authorized personnel, to go upon or remain in any park, parkway median, mountain park or other recreational facility, or any area or part of the same, at any time when the same is declared to be closed to the public by the manager. (Ord. No. 446-12, § 1, 9-10-12).

Rodriguez entered and used the Center without permission in violation of this rule since, without proper authorization following proper pre-payment, it was deemed closed. She also allowed unauthorized persons to enter and use the Center in violation of this law by failing to take and record payment for its use, with the result that the Center was closed.

Sec. 39-4 Restriction or prohibition of uses and activities

(a) It shall be unlawful for any person, other than authorized personnel, to engage in any use of or activities in any area or part of any park, parkway, mountain park, or other recreational facility in violation of any temporary directive issued by the manager restricting or prohibiting such use or activities.

The Agency presented no evidence of a temporary directive by the manager, without which there was no violation under this law.

Sec. 39-5 Compliance with permits; admission fees; failure to have a required permit

(a) It shall be unlawful for any person, other than authorized personnel, to fail to observe or comply with written permits issued by the department of parks and recreation.

In the absence of a written permit issued by the Agency, the Agency failed to prove a violation under this law.

- (b) It shall be unlawful for any person, other than authorized personnel, to enter or use any park, mountain park, or other recreational facility without paying any required admission fee or failing or refusing to produce, upon request any required evidence of payment of a required admission fee.**

When Rodriguez failed to collect the required payment for Hernandez's use of the Center he was not authorized to enter or use it. Since the Center was not authorized for use, Rodriguez's participation in the Hernandez party was not as "authorized personnel." She had no more right to enter or use the Center than any other person who would enter and use the Center without payment or other authorization. Thus, in addition to violating this law by her own entry and use of the Center, Rodriguez violated this law by the separate act of permitting another to enter and use the Center without paying the full required fee.

- (c) It shall be unlawful for any person, other than authorized personnel, to engage, without a permit, in an event, use or activity in a park, parkway median, mountain park, or other recreational facility for which a permit is required by the department of parks and recreation. (Ord. No. 446-12, § 1, 9-10-12; Ord. No. 728-15, § 1, 11-9-15)**

Despite the grammatical difficulty with this ordinance, the underlying prohibition against use of a recreational facility such as the Center, without payment of the required Agency fee, remains clear. Accordingly, Rodriguez was in violation of this ordinance, both by participating in, and by permitting the use of, the Center by Hernandez and his guests, without having collected the fee for its use, as required.

8. CSR 16-29 I. Conduct which is or could foreseeably (1) be prejudicial to the good order and effectiveness of the department or agency; (2) bring disrepute on or compromises the integrity of the City; or (3) be unbecoming of a City employee.

Martinez, the Deputy Executive Director of the Agency and decision-maker in this case, testified Rodriguez and the Agency are in a position of trust on behalf of the citizens of Denver. Appellant's failure to collect required fees and her allowing the unpermitted use of the Center was prejudicial to the good order and effectiveness of the Agency. In addition, her allowing unpermitted use of the center created a significant risk of liability to the City, and thereby compromised the integrity of the City. Finally, her failure to secure payment and waiver of liability, whether intentional or reckless, was unbecoming of a City employee in her position as a supervisor. This violation is established by a preponderance of the evidence.

V. DEGREE OF DISCIPLINE

The purpose of discipline is to correct inappropriate behavior if possible. Appointing authorities are directed by CSR 16-41 to consider the severity of the offense, an employee's past record, and the penalty most likely to achieve compliance with the rules. CSR 16-41. The measure of these considerations is whether the penalty assessed is within the range of penalties that could be imposed by a reasonable and prudent administrator, or is clearly excessive. In re Ford, CSB 48-14A, 8 (9/17/15).

A. Seriousness of the proven offenses

As a supervisor, Rodriguez had a higher responsibility to enforce Agency rules and set an example. Her failure to collect the required fee and to have Hernandez sign required paperwork exposed the City to a real risk of liability, and violated her fiduciary responsibility to the City.

B. Prior Record

Rodriguez had no prior discipline.

C. Likelihood of Reform

Rodriguez denied all wrongdoing, yet acknowledged her fiduciary responsibility to collect required fees before allowing use of the Center. [Rodriguez cross-exam]. During hearing, Rodriguez seemed unaware she violated Agency and City requirements. Nonetheless, even in the absence of bad intent, the Agency's decision-maker acted within the scope of a reasonable and prudent administrator in choosing to dismiss Rodriguez instead of assessing a lesser penalty. Even if Rodriguez were capable of reform, the decision-maker acted within the scope of his authority in finding the seriousness of the violations outweighed any such potential reform.

VI. ORDER

The Agency's dismissal of Rodriguez on October 10, 2017 is AFFIRMED.

DONE February 5, 2018.



Bruce A. Plotkin
Career Service Board Hearing Officer

NOTICE OF RIGHT TO FILE PETITION FOR REVIEW

You may petition the Career Service Board for review of this decision, in accordance with the requirements of CSR § 21-20 et seq., within fourteen calendar days after the date of mailing of the Hearing Officer's decision, as stated in the certificate of delivery, below. See Career Service Rules at www.denvergov.org/csa. **All petitions for review must be filed with the following:**

Career Service Board

c/o OHR Executive Director's Office
201 W. Colfax Avenue, Dept. 412, 4th Floor
Denver, CO 80202
FAX: 720-913-5720
EMAIL: CareerServiceBoardAppeals@denvergov.org

Career Service Hearing Office

201 W. Colfax, Dept. 412, 1st Floor
Denver, CO 80202
FAX: 720-913-5995
EMAIL: CSAHearings@denvergov.org.

AND opposing parties or their representatives, if any.