

DECISION AND ORDER

JOSE SANTISTEVAN, JR., Appellant,

v.

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

The hearing in this appeal was held on Feb. 22, 2017 before Hearing Officer Valerie McNaughton. Appellant was represented by Brian Reynolds, Esq., and Assistant City Attorney Natalia Ballinger appeared for the Agency. Adam Haas and John Martinez testified for the Agency. Appellant testified on his own behalf, and presented the testimony of Thomas Herndon.

I. STATEMENT OF THE APPEAL

Appellant Jose Santistevan, Jr. challenges his demotion from the position of Senior Recreation Supervisor to Recreation Coordinator imposed by the Denver Department of Parks and Recreation (Agency or DPR). The parties stipulated to the admission of Agency Exhibits 1 – 8 and 14, and Appellant Exhibits A – V. Exhibits 9 – 13, W and X were withdrawn.

II. FINDINGS OF FACT

Appellant was hired as a Recreation Coordinator in 1990. He was promoted to Senior Recreation Supervisor in 2014 after having served as a Recreation Supervisor for two years. As Sr. Recreation Supervisor, Appellant managed operations and staff at La Familia Recreation Center as well as the city-wide Youth Sports Program.

In August, 2016, an audit by the Denver Auditor’s Office of the PLAY membership program discovered problems in how transactions were being processed. Among other discrepancies, nine sales made by Recreation Supervisor Adam Haas were found to have been made to ineligible persons. Haas is the primary employee credentialed to authorize PLAY sales at La Familia. When asked about one of those sales, Haas told Agency managers that Appellant had asked him if there was anything he could do for Gabriela Flores, a struggling college student who was dating Appellant’s son. In response, Haas issued a PLAY membership for Flores without ensuring that she was qualified based on financial need. [Exh. 14.] At a different time, Appellant asked Haas to help his sister Barbara Camacho, who wanted to enroll her children in summer programs. Again, Haas processed the PLAY pass without asking for documents confirming Camacho’s eligibility

for discount membership. As to the other seven memberships he sold which showed problems, Haas testified he obtained the supporting documents and issued the passes, but believes the system may have failed to store the documents properly. As a result of the investigation, Haas was demoted to the position of Recreation Coordinator. [Haas, 9:11 am.]

Based on the information about Appellant provided during the PLAY investigation, the Agency ran a Receipt Audit Report of Denver Health and Hospital (DHHA) memberships issued under Appellant's credentials from Jan., 2015 to Sept. 20, 2016. The report found 47 ineligible persons were issued free passes. [Exh. 7.] The Agency ordered an investigation into Appellant's PLAY and DHHA transactions as well as an allegation of nepotism. The Sept. 30, 2016 confidential investigative report substantiated all three allegations. [Exh. 5.] Based thereon, disciplinary proceedings were begun against Appellant on Nov. 25, 2016. Appellant was also charged with logging in and out for employees in the Kronos timekeeping system and approving excessive hours for four relatives who were on-call sports officials. [Exh. 1.]

At the contemplation of discipline meeting, Appellant admitted he asked Haas if he could help Gabriella Flores get a PLAY pass, and that he described her as a struggling student, as Haas had said during his interview. Appellant denied requesting a free pass for his sister Barbara Camacho, but said he merely asked Haas to rush the process so her children could meet the enrollment deadline for summer classes, and sent Haas the required documents proving eligibility. Appellant acknowledged he issued two DHHA passes to Alena and Robert Duran. He explained that he did so to help out a fellow city employee and her husband, who wanted to work out while their children attended DPR classes. Appellant denied any knowledge of the remaining 45 free DHHA memberships listed under his log-in information.

Appellant confirmed that his sons and sister work under him, but said he obtained permission from his supervisor before they applied. The relationship was disclosed in their applications, and Human Resources did not disqualify them based on that relationship. Appellant added that his sons report to the Youth Sports lead workers, not directly to him. He approved extra hours for relatives serving as sports officials after obtaining permission from Herndon to use them for field clean-up and other necessary but undesirable youth program work. Finally, Appellant told the discipline panel that he logged the work hours for his on-call sports officials, again with Herndon's permission, because there was no other practical method for them to get paid in a timely manner. [Exh. 3.]

Deputy Executive Director John Martinez made the disciplinary decision. Martinez found that Appellant had violated all of the cited rules, contrary to his obligation to use good judgment and responsibly use city assets for the benefit of citizens. Because these incident caused Martinez to lose trust in Appellant's ability to supervise, Martinez demoted him to the position of Recreation Coordinator, the position into which he was hired in 1990.

III. ANALYSIS

It is the Agency's burden to prove the cited violations of the Career Service Rules by a preponderance of the evidence, and to show that its penalty is in keeping with

the purposes of discipline under the Career Service Rules. In re Vega, CSA 12-14, 2-3 (7/3/14; Turner v. Rossmiller, 535 P.2d 751 (Colo.App. 1975).

A. PLAY passes

The Agency first alleges that Appellant's requests for free passes for his sister and his son's girlfriend constituted neglect of his duty to safeguard agency assets as well as failure to follow PLAY program policy. [Martinez, 9:49 am.]

All employees undergo mandatory training on the requirements for a PLAY pass. [Martinez, 9:23 am.] Appellant admitted that he requested the assistance of Adam Haas to get passes for his son's girlfriend Gabriela Flores and his sister Barbara Camacho. In Flores' case, Appellant acknowledged that he presented her to Haas as "a struggling college student who likes to work out", and that he did not submit documentation of her financial eligibility with his request. [Exh. 14.] On the basis of perceived pressure from his supervisor, Haas issued the membership pass without verifying her eligibility. [Exh. N-7.] The Agency therefore proved that Appellant neglected his duty as a manager responsible for the integrity of membership programs under CSR §§ 16-60 A, the rule in effect on Feb. 2, 2016 when the pass was issued. [Exhs. A-1, N-7.]

In the case of the Camacho membership, Appellant has consistently maintained that he sent Haas the required documents, and was simply asking Haas to process the application quickly. Haas said he did not ask Appellant for the documents because he assumed he was being asked to help out a colleague. "This was a department where we used to help people." [Haas, 9:15 am.] Haas acknowledged that he has lost supporting documentation for at least seven other applications, the other ones identified by the Agency as issued improperly by Haas. Haas also complained that this audit was not performed by professionals, in that he was presumed responsible despite the storage problems for documents in the "time-sensitive" system. [Haas, 9:19 am.] The Agency did not rebut this testimony.

I find the most credible evidence supports Appellant's statements that he sent the document for Camacho to Haas, statements made both at his contemplation of discipline meeting and at hearing. [Appellant, 11:21 am; Exh. 3.] His credibility is further supported by the fact that throughout these proceedings he has admitted to improperly requesting a pass for Flores. Based on that evidence, I find the Agency did not prove Appellant neglected his duty with regard to the Camacho PLAY pass under § 16-29 A, the disciplinary rule in effect on Mar. 3, 2016, the date of the original membership sale. [Exh. N-6.] The Agency therefore proved the allegation of neglect only as to the Flores PLAY pass based on Appellant's poor performance of his duty to follow program eligibility requirements. See In re Fresquez, CSA 63-16, 5 (2/24/17). Based on the same evidence, the Agency proved Appellant violated his performance standard requiring him to oversee the facility according to DPR policies, in violation of § 16-29 G. [Exh. A-26.]

The Agency also alleged that Appellant's requests to Haas to help Flores and Camacho obtain PLAY passes were a failure to follow orders or perform assigned work

under CSR § 16-29 F. The Agency presented no evidence that Appellant had been ordered to perform any work, or failed to perform any work, germane to this transaction. This allegation is not proven.

Finally, as to the PLAY program, the Agency asserts that Appellant's pressuring of a subordinate to give financial aid to Appellant's family members was prejudicial conduct prohibited by § 16-29 T. [Martinez, 9:53 am.] However, the Agency succeeded in proving only its claim related to Gabriella Flores, who is not a family member. This allegation is therefore unfounded.

B. DHHA memberships

The second issue is whether Appellant improperly issued DHHA passes for 47 ineligible applicants, as indicated by the Receipt Audit Report covering Jan., 2015 to Sept., 2016. [Exh. 7.] Appellant admitted that he did issue passes for a city employee Alena Duran and her husband Robert Duran on Mar. 25, 2016. [Exh. 7-8.] He denied issuing the remaining 45 memberships, which he assumed were issued by other employees under his log-in. Appellant concedes it was a mistake for him to leave his log-in active when stepping away from the terminal, but that he did so in order "to provide good business to the public", given the conditions under which the center was required to function.

La Familia Recreation Center has one point-of-sale (POS) computer terminal, an older computer located at the front desk that has no ability to save drafts. If a worker is interrupted - as frequently happens - and logs off before finishing a transaction, the sale must be started anew. Some employees have no working log-ins for various reasons. All employees use that terminal to conduct the center's business, including issuance of DHHA memberships, using either their own log-in credentials or those already entered. Until the audit raised the issue, employees believed that pass sales were based on the point of sale, i.e., the specific recreation center that issued the pass. Instead, sales are considered the responsibility of the employee under whose log-in credentials it was issued. "People don't really understand the credentials they signed. They're not bank tellers ... You could have times where five to six people are using the system, without logging in or out, because there is no other terminal, customers are waiting", and the center attempts to provide the "world class" customer service promoted by city administration. [Herndon, 1:53 pm.]

Recreation Director Thomas Herndon testified that all but one of his twelve recreation centers have problems with DHHA membership sales issued under another employee's log-ins. The one center free of these problems is overstaffed and has three POS terminals. The issue is hardest on supervisors, who must log-in and out to override mistakes. The investigation revealed that many employees leave the computer without logging off. It also showed that a defect in the system - since corrected - permitted the PLAY button to be inadvertently selected. Since the discipline of Appellant, "employees are conscious, doing a better job, but an emergency would trump that." [Herndon, 1:57 p.m.]

Appellant testified that it is “very common” for all employees, including him, to be called away while still logged on. He takes calls from upset parents, rotates shifts, checks the pool, and does other customer service work. Appellant and Herndon both testified that logging in and out was considered impractical and inefficient until this investigation revealed the importance of credentials in accounting for the sale of passes. At the pre-discipline meeting, Appellant offered to repay the cost of the DHHA passes issued under his log-in “if you think I should”, not because he issued the passes, but because he felt responsible for not logging off, and feared he would lose his job. [Appellant, 11:30 am; Exh. 3.]

Under these circumstances, the fact that Appellant’s log-ins were used does not establish by a preponderance of the evidence that he entered 45 of the 47 Denver Health membership sales attributed to his log-in password. As a result, the Agency only proved Appellant neglected his duty to comply with program rules as to the DHHA free passes issued to Alena and Robert Duran, in violation of CSR § 16-29 A, the rule in effect on the date the passes were issued. [Exh. 7-8.]

The Agency also alleged that Appellant was dishonest in issuing 47 DHHA memberships with a total potential value of over \$17,000, as prohibited by Career Service Rules. Martinez concluded that Appellant’s actions were willful based on Appellant’s offer to pay back \$17,000 at the contemplation of discipline meeting. As found above, Appellant did not issue 45 of the cited memberships listed under his log-in. He did issue two free memberships in order to “help out” a fellow city employee and her husband, thinking it was consistent with his job to provide good customer service. There is no evidence that Appellant knew his action would be viewed as a theft by the Agency, or that his intention was otherwise dishonest within the meaning of CSR § 16-29 D. See In re Mounjim, CSB 87-07, 5-6 (1/8/09).

Finally, Martinez found Appellant violated his computer user agreement by not logging off to prevent others from issuing DHHA memberships to ineligible persons. [Martinez, 9:55 am.] However, this allegation was not included in the disciplinary letter, and there is no evidence in the record about the terms of the computer user agreement. This claimed violation of the former and current rules against neglect of duty and carelessness is therefore unproven as to the DHHA allegation.

C. Nepotism charge

Next, the Agency found Appellant had not obtained a waiver to hire or supervise his sister and two sons, in violation of the city’s ethics code. At hearing, the Agency stipulated that his three relatives were not hired in violation of the ethics code. What remains is the allegation that Appellant acted as their supervisor without obtaining a waiver, as required by DRMC § 2-59(b). Appellant testified that his sons were supervised by Recreation Coordinator Chip Erickson, who made assignments and scheduled their work. [Appellant, 11:10 am.] Appellant’s sister Barbara Camacho also reported to a recreation coordinator, who in turn was supervised by Appellant as head of the Youth Sports Program. [Appellant, 11:56 am.]

Prior to his sons' and sister's application for employment in 2010, 2011 and 2014, respectively, Appellant requested advice from his supervisor Thomas Herndon to determine if their employment was permissible. Herndon told him he saw no "red flag" if Appellant did not directly supervise them. Herndon testified that his advice was based on his then-current understanding of the ethics rules. When shown the 2009 version of D.R.M.C. § 2-59, he conceded that, to his surprise, "direct line of supervision" includes "the supervisor of an employee's supervisor". [Exh. B-2.] Herndon still stands by his approval of the hires, given the nature of the sons' positions. The Agency has about 250 vacancies for sports officials because they are on-call, manual labor positions without guaranteed hours or benefits. [Herndon, 1:32 pm.]

The purpose of the ethics rule "is to avoid favoritism by [employees] to their immediate family members." DRMC, Art. IV, § 2-59. The rule liberally permits waivers when it "will serve the best interests of the city", and provides an employee six months "to come into compliance or to obtain a waiver." § 2-59(c). The rule lists certification through a competitive process as grounds for such a waiver. Here, all three family members were hired based on a competitive process, and were therefore eligible for a waiver.

Appellant was hired in 1990, well before the 2009 amendment to the Code of Ethics, and received no training on the changes in the rule that prohibit his indirect supervision of his sons and sister absent a waiver. Appellant and Herndon were both unaware that the rule required a waiver for second-level supervisors, and therefore neither intentionally disobeyed § 2.59. Martinez himself admitted that he seeks guidance from the City Attorney's Office when he has an ethics question, since that is not his area of expertise. [Martinez, 10:07 am.] An unwitting violation of a waivable ethics rule, taken with permission of his supervisor, does not establish what is needed to prove a violation of CSR § 16-29 R, which requires proof that the employee had notice of a policy but failed to follow it. In re Mounjim, CSB 87-07, 6 (1/8/09).

D. Improper Kronos entries

Next, the Agency alleges that Appellant violated Fiscal Accountability Rule (FAR) 10.13 and the Agency's security policies on time and attendance by entering work time into Kronos for nine of his direct reports. [Exh. 2-8.] The parties stipulated that Appellant entered time in Kronos from Jan., 2015 to Oct., 2016 for five of those employees: Recreation Assistant Barbara Camacho, Recreation Instructor Kelly Cardenas, and Sports Officials Jonathan Santistevan, Jose Santistevan III, and Roberto Cardenas. [Hearing, 8:32 a.m.] As to the remaining four employees, the Agency presented no evidence in support of the charge.

Appellant presented rebuttal evidence only as to the three sports officials, arguing that, despite the requirement that employees must enter their own Kronos time, the field officials had no practical way to do so. The Agency's security rules recognize that employees may log-in to Kronos using terminals, PCs, or TTE, a log-in method using an employee's own phone. [Exhs. 4, 5, and 8.] Since sports officials perform their work at a city park rather than an office, they are restricted to TTE for logging their time.

Appellant's supervisor Thomas Herndon described the alternate timekeeping process he approved for Appellant to verify the time for his 350 employees. He noted several special circumstances justifying the accommodation. Competitions for which sports officials are needed occur on evenings and weekends in parks, where there are no computers or phones. On-call employees often forget to clock in or out or to bring a charged phone. Further, the TTE system is not problem-free. It requires an employee to fill in a form and get approval from a non-DPR system, punch in 25 numbers to log-in, and use a different number sequence to log-out. Employees have been defeated in their efforts to log-in by repeated busy tones, misdials, low batteries, and other technical and practical difficulties. Since many are busy parents with no other connection to the city, mistakes were frequent. In response to Herndon's request, Appellant recruited many officials. When his recruits were not paid, they resigned in frustration, and Appellant was left with more hard-to-fill vacancies. Before the change approved by Herndon, Appellant spent two to three hours from Sunday evening to early Monday morning just entering and correcting sports officials' time. [Herndon, 1:34 pm; Exh. 3.]

When Appellant and Herndon discussed this recurring issue, Herndon approved Appellant's suggested fix: Appellant would enter the time himself for the officials based on their game schedule, and would correct entries if the official did not work the time. Neither was concerned that an absent official would be paid, since such an event would be immediately reported by angry emails or calls from parents and players. Even after both Herndon and Appellant attended Agency FLSA training by Assistant City Attorney John Sauer, neither believed their work-around practice for sports officials was prohibited by the rules, given the critical need under law and policies to timely pay employees for their work. Herndon confirmed that when he took over Appellant's Kronos duties, it took him 3 ½ hours to complete, and required him to come in over the weekend in order to meet Monday's 10 a.m. payroll deadline. [Herndon, 1:35 – 1:44 p.m.]

The Agency did not rebut the testimony of Herndon or Appellant on this issue. Martinez conceded that Appellant "discussed with his supervisor ... that he was spending an inordinate amount of time correcting time entries for on-call sports officials." Appellant was told by Herndon to "go ahead and enter the time yourself" ... but Herndon didn't have the authority to give him that permission." [Martinez, 9:48, 10:12 a.m.] There is no evidence that Martinez informed Herndon of this lack of authority after being told about the work-around. It is also significant that Martinez admitted other supervisors use the same practice, but that they have not been disciplined for entering time for employees. [Martinez, 10:12 am.]

Indeed, the fiscal and security rules present employees and supervisors with individual responsibilities that may be competing: Employees must log their own time, and supervisors must ensure hours are accurate and employees are paid. FAR 10-13 Rules 6, 8, 9. The rules may be read consistently by interpreting them as procedural rules subject to operational differences among agencies, the goal of which is to standardize timekeeping and pay practices to the extent practicable. Here, thirty minutes of credible testimony by Appellant and his supervisor demonstrated that their arrangement for the three on-call officials did not violate either the FAR or Agency rules.

Appellant stipulated that he also entered time for Recreation Assistant Barbara Camacho and Recreation Instructor Kellie Cardenas, and presented no defense to those actions. Based on the stipulation, the Agency established that Appellant violated FAR 10.13 and the Agency's security policy by entering work time for those employees from Jan., 2015 to Oct., 2016. [Exhs. 4, 5, 8-3.] The Agency therefore also proved Appellant performed his Kronos duties in a careless manner, failed to meet established Kronos performance standards, and violated the FAR and Agency regulations as to Camacho and Cardenas, in violation of CSR §§ 16-29 A, G, and R. [Exh. A-26.]

E. Approval of excessive hours for family members

The last allegation is that Appellant authorized excessive hours for four Sports Officials, including his two sons. [Exh. 2-9.] The 2016 YTD Pay Period End Report attached to the disciplinary letter shows that Robert Cardenas and Jonathan Santistevan both had twelve pay periods with over forty hours, roughly equivalent to a half-time position. Josh Rogers and Jose Santistevan III had nineteen two-week pay periods where their hours were in excess of forty. None of those pay periods were over 79 hours for the two-week period. [Exhs. 2-16 to 2-21.]

Appellant testified in detail about the conditions supporting his request to use on-call sports officials to perform safety, field clean-up and other work. In lieu of more expensive contract officials or overtime for regular employees, Appellant staffed sports events with the Agency's on-call officials to provide security at tournaments and other events. The combination of youthful athletes, intense competition, alcohol, marijuana, and overexcited parents has frequently caused Appellant to separate combatants and even call the police to restore order. After consulting with Herndon, Appellant authorized extra hours for the on-call sports officials. Appellant stated that the list attached to the discipline letter did not show all the officials given extra hours. He asked all of the on-calls to work hours when they could. The above four agreed to take extra hours on a regular basis, and therefore worked the most hours. [Appellant, 11:57 am; Exh. 3.]

Preparation for games, including field clean-up, was also a common cause of extra hours. Before Appellant received permission from Herndon to use the on-calls, parents frequently complained about the presence of drug paraphernalia, waste and overflowing trash bins in the parks during games. He was unsuccessful in many attempts to resolve the issue by calling Parks and Recreation, whose employees are not available to assist after 3:30 pm on weekdays, or at all on weekends. "It would correct itself for a day or two", then the problems would continue. [Herndon, 2:27 pm.]

Appellant's supervisor testified that he received many compliments about the improved conditions at the center and at games after Appellant took over. Appellant came up with a plan and worked with the community to reduce gang violence, calm irate parents, resolve issues, and present a positive image at La Familia and in the youth programs. Herndon approved Appellant's use of on-calls during off-seasons for sorting and distributing uniforms and equipment for up to 2,500 participants, and assist in cold-weather emergency supervision of homeless people at recreation centers at the

Mayor's request. Herndon approved Appellant's use of the extra hours shown for the four employees at issue. [Herndon, 1:45 pm.]

In response, the Agency does not dispute that the work was approved and necessary, but argues that the only workers receiving extra hours were family members. Appellant credibly testified that he gave extra hours to anyone who had the ability to work them. [Appellant, 11:57 am.] His supervisor confirmed that the extra hours were given to those who were reliable and available, and did not single out Appellant's sons. [Herndon, 1:45 pm.] The preponderance of the evidence does not show that Appellant violated any performance standard by assigning additional work hours to the four sports officials.

IV. PENALTY DETERMINATION

Discipline must be "reasonably related to the seriousness of the offense", and be of the type and amount the Agency believes is needed "to correct the situation and achieve the desired behavior or performance." CSR § 16-41. The Agency's imposed discipline should be upheld if it is within the range of alternatives available to a reasonable and prudent administrator." In re Economakos, CSB 28-13, 2 (3/24/14), citing Adkins v. Division of Youth Services, Dept of Institutions, 720 P.2d 626, 628 (Colo.App. 1986).

This decision-maker analyzed Appellant's actions as misconduct rather than performance issues, and testified that as a result he had lost trust in Appellant's judgment to handle supervision where he would have access to budgets and staffing. Martinez acknowledged that this was the hardest decision he has had to make as an Agency leader, because he considers Appellant a friend. "We grew up in the department together." [Martinez, 9:56 am.] Appellant and Martinez have worked together for almost a quarter of a century, during which Appellant has received outstanding evaluations and no discipline. [Exhs. 2-9, A.] Appellant's supervisor Thomas Herndon is the most senior of the three, having worked at the Agency for 33 years. Herndon's testimony confirmed his authorization of the now-disputed practices. This is persuasive evidence that Appellant acted at most out of negligence in the three proven charges rather than an intent to be dishonest or unethical.

The Agency based its penalty decision on the five types of misconduct described above. The evidence supported three of them to varying degrees. There were 65 separate instances within those five categories, and only five of them were established. Mathematically and factually, the proven violations are well short of those used by the Agency to determine that a two-level demotion was the appropriate discipline.

Martinez disciplined two supervisors for misuse of the PLAY program: Appellant and Adam Haas. The Agency claimed Haas issued nine passes without supporting documents, and Haas admitted to two of those nine. Appellant was charged with pressuring his subordinate to issue two passes, and admitted to asking Haas to issue a pass for Flores. The penalty decision was based on Martinez' conclusion that all of the asserted violations were proven, and that Appellant's status as Senior Supervisor called for a more severe penalty than that imposed on Supervisor Haas, the official charged with actually

issuing the PLAY passes. Haas was given a one-level demotion from Recreation Supervisor to Recreation Coordinator. Appellant was demoted from Sr. Recreation Supervisor to Recreation Coordinator. Since both are supervisors, the distinction does not appear to be based on considerations that would persuade a reasonable administrator.

Given the seriousness of the misconduct, Martinez first considered termination, but mitigated to the two-level demotion in light of Appellant's "really positive, consistent performance reviews ... and long history with the city ... he deserves a second chance." [Martinez, 9:56 am.]

This discipline was imposed for actions deemed dishonest and unethical. I have found that the evidence supported neglect and poor performance, and rejected a claim that his actions violated the rule prohibiting conduct prejudicial. The Agency did not prove its allegations of nepotism or favoritism to family members, the apparent basis of Martinez' conclusion that he could no longer trust Appellant with staffing and budgeting issues. As indicated by the evidence, Appellant's actual missteps were negligent rather than willful, and therefore more likely to be correctable by discipline more appropriate to their seriousness. At the contemplation meeting and at hearing, Appellant demonstrated willingness to take responsibility and learn from this discipline.

I find that the discipline here was based substantially on factual conclusions unsupported by the evidence. Its severity is outside the range of penalties that a reasonable administrator would have imposed for the proven violations. I credit Martinez' concerns about Appellant after discovering that he urged a subordinate to issue a free pass to his son's girlfriend. However, in the absence of proof of the remaining allegations of self-dealing, that one instance is an insufficient basis for a conclusion that Appellant can no longer be trusted to act as a supervisor, in light of his 26 years of highly-praised performance. Demotion to the position into which he started in 1990 is disproportionate to the proven charges, and not reasonably related to the seriousness of Appellant's actions. Economakos, supra at 3. As such, it is not tailored to the type and amount needed to achieve the purposes of discipline, and is more likely to demotivate rather than achieve compliance with performance standards. Based on the nature and seriousness of the proven violations, Appellant's impressive evaluations, the complete absence of discipline during his long career, and the one-level demotion imposed on Haas for similar actions, I find that a one-level demotion to Recreation Supervisor is the appropriate discipline under the penalty factors relevant to the Career Service Rules. CSR § 16-40 et. seq.

V. ORDER

Based on the foregoing findings of fact and conclusions of law, the Agency's action is MODIFIED to a demotion to the position of Recreation Supervisor.

Dated this 10th day of April, 2017.]



Valerie McNaughton
Career Service Hearing Officer