

DECISION AND ORDER

IN THE MATTER OF THE APPEAL OF:

VERONICA SERNA, Appellant,

vs.

DEPARTMENT OF HUMAN SERVICES,
and the City and County of Denver, a municipal corporation, Agency.

The hearing in this appeal was held on Feb. 12 and 13, and Mar. 21, 2013 before Hearing Officer Valerie McNaughton. Appellant was present and represented by attorneys Michael O'Malley and Edward Russell Harris. Assistant City Attorney Andrea Kerschner represented the Agency in these proceedings. Geraldine Bettis, Renee Newton and Andrea Albo testified for the Agency. Appellant testified on her own behalf, and presented the testimony of Toan Nguyen, Carol Spink and Tricia Cordova. 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 Veronica Serna appeals her Oct. 17, 2012 disciplinary demotion from Case Management Supervisor to Case Management Coordinator at the Denver Department of Human Services (Agency). Appellant initially raised claims of discrimination and retaliation. The discrimination claim was dismissed on Nov. 19, 2012, and Appellant withdrew her retaliation claim on Feb. 12, 2013.

The parties stipulated to Agency exhibits 3 to 18, as well as Appellant's exhibits A, C, D, F, H, and M to R. The following additional exhibits were admitted at hearing: E-4 to 6, J-1 to 6, L, M-1, S to U, W, X, CC, DD-1 to 2, EE-2 to 5, FF-35, 39 and 60, GG, HH, and KK.

II. ISSUES FOR HEARING

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); and

2) Did the Agency establish that demotion was within the range of penalties that could be imposed by a reasonable administrator for the violations established by the evidence.

III. FINDINGS OF FACT

At all times relevant to this appeal, Appellant Veronica Serna was a Case Management Supervisor in the Family and Adult Services unit within the Department of Human Services. Her duties were to supervise and evaluate the work of employees who receive and process applications for public assistance.

Denver's Department of Human Services is a local agency responsible for administering federal grants-in-aid on behalf of the Colorado Department of Human Service under applicable federal and state laws and regulations. See 7 USCA § 2012(t)(1); CRS § 26-1-108(2); 109. Federal law requires among other things that an administering local agency provide food stamps to eligible applicants within thirty days of their application. An agency's failure to comply may subject it to fiscal sanctions, reductions to grants-in-aid, and/or judicial enforcement actions. C.R.S. 26-1-109(4)(b); 10 CCR 2506-1, B-4010.31.

In a 2004 lawsuit challenging Colorado's failure to comply with the federal food stamp processing and other deadlines, the parties stipulated to specific corrective measures, including that the state would maintain a 95% timeliness rate in the processing of food stamp applications for the six-month period ending on Sept. 30, 2012. [Davis v. Henneberry, 04CV7059, Denver District Court; Exh. 17-6.] In order to improve the Agency's processing performance, the Division distributed instructions on how to expedite and track the work flow in the City and County of Denver, which is 25% of the Colorado caseload. [Exhs. 5, 6-1.] Director Andrea Albo and Operations Supervisor Geraldine Bettis met regularly to manage the work affecting their ability to comply with the Sept. 30th deadline, using their two computerized databases, the Work Management System (WMS) and the Colorado Benefit Management System (CBMS).

In early August, Ms. Bettis reviewed the pending caseload to identify the tasks that needed to be completed in order to meet the Sept. 30th deadline. She found that 45 overdue tasks required additional research to resolve issues affecting their ability to be processed, and that 97 tasks still needed other work. Ms. Bettis scheduled two Saturday overtime sessions for Aug. 11 and 18 so that staff could have time to complete these overdue tasks. [Bettis, 2/12/13, 10:39 am; Exhs. 15, B.]

Ms. Bettis was scheduled for vacation from Aug. 6 to Aug. 14, 2012. On Aug. 3rd, the Friday before her vacation was set to begin, Ms. Bettis met with Appellant and other unit supervisors to discuss the work on which they needed to focus while she was gone. Although there were three Case Management Supervisors then assigned to the unit, one of them was new and still in training, leaving Appellant and Elena Quezada as the only supervisors to research and prepare the tasks for the two overtime sessions. Ms. Bettis directed Appellant and Ms. Quezada to give top priority to researching overdue food stamp tasks by Aug. 17th, then submit their list of researched cases to administrator Matthew Krieger so the overtime teams could determine and close the applications. Food stamp benefits that were approved on or before the final overtime session on Aug. 18th could be paid to the applicants on Sept. 1, 2012. Appellant and Ms. Quezada were also instructed to assign overdue tasks to their teams, and keep up with the ongoing caseload. [Bettis, 10:31-10:40 am.]

Ms. Quezada was named the lead on the project. At her suggestion, all supervisors designated a member of their team to research the overdue tasks so that the remaining team members could work on the rest of the caseload. Appellant selected Carol Spink to work on the overdue tasks for her team. [Exh. X-1.]

Later that day, Ms. Bettis emailed her supervisors a list of the overdue and upcoming tasks, and repeated the instructions given at their meeting. [Bettis, 2/12/13, 10:39 am; Appellant, 3/21/13, 10:01 am; Exhs. 4, 13.] Appellant was given pages two to four of that list, and was instructed to complete those tasks by Aug. 17th. [Exh. 15.] Appellant prepared her own list of the tasks completed by her team based on the three pages assigned to her. [Appellant, 10:05, 10:44 am; Exhs. 13-2 to 4, L.] Appellant also prepared a list of the research tasks that were completed by her team. [Exh. DD-1.] In general, the workloads assigned to each team were close to equal. [Bettis, 2/12/13, 11:31 am.]

Ms. Bettis returned from her vacation on Aug. 15, 2012. Upon checking the WMS report of assignments and closed cases, she learned that there were now a total of 195 overdue tasks and that the tasks assigned on Aug. 3rd had not been completed. [Exh. 15.] Ms. Bettis met with her supervisors and asked them why the work was not done. Appellant suggested that they should move forward. [Exh. 7-1.] Ms. Bettis responded that they needed to discuss the expectations given to the supervisors. The group then developed a plan to finish the work. Ms. Bettis herself completed the research on the overdue tasks in about four hours. The Agency as a whole did not meet the 95% timeliness rate for processing food stamp applications for the period ending on Sept. 30, 2012. [Albo, 4:05 pm; Exh. 17-6.]

Ms. Bettis thereafter consulted with Division Director Albo, and arranged another meeting with Appellant to discuss her failure to finish her assigned work. On Aug. 17, Ms. Bettis, Ms. Albo, Executive Director Valerie Brooks and Human Resources employee Michelle Hunter-Diamond met with Appellant, and asked for details about her work on the project. Appellant apologized and asked what she needed to do to rectify the situation. She explained that when she realized the work was not getting done, she loaded up her staff's queues with tasks for them to complete. [Exh. X-3.]

At Ms. Albo's request, Ms. Bettis investigated Appellant's claim that she had loaded her team's queues. [Bettis, 11:08 am; Exh. 16.] She found that Appellant had not accessed the cases in the database until after the Aug. 17th deadline had expired. [Bettis, 11:11 am; Exhs. 15, 16.] The system showed that Appellant had done no research herself, but had assigned 19 tasks to her staff during that time. Ms. Bettis did not consider 19 tasks as "loading the queue" as that term was used within the unit. [Bettis, 11:37 am; Albo, 2:41 pm.]

After discussing the matter with Appellant during their weekly meetings, they both agreed that Appellant's reliance on Ms. Spink to process adult medical and food assistance claims indicated that Appellant needed additional training in those functions. [Bettis, 11:42 am.] The training was scheduled on Aug. 20, 2012. [Exh. 8.]

On Sept. 20, 2012, Appellant was served with a pre-disciplinary letter based on her failure to complete the priority overdue tasks project. [Exh. 3.] Appellant submitted a written statement at the Oct. 5th pre-disciplinary meeting, in which she asserted that she assigned 24 of the overdue tasks and an additional 11 tasks in overtime. She stated that her team completed 19 tasks by Aug. 22nd, including two that Appellant completed. [Exh. X.] Shortly thereafter, Appellant submitted a supplementary packet of emails, hearing requests and other work which she claimed reduced the time she had available to complete the Aug. 3rd assignment.

Division Director Albo made the disciplinary decision in this case after reviewing Appellant's work history and all of the information and documents submitted by Ms. Bettis and Appellant. After reviewing Appellant's supplementary packet, she found that some of the additional work identified by Appellant did not relate to the time in question. She also found that the remaining work should not have prevented Appellant from finishing her assignment.

Both Ms. Bettis and Ms. Albo had served in positions requiring them to perform this type of work, and now supervised those doing the work. The statewide standard for processing claims is 14 per worker per day. Denver, which makes up one-quarter of the state's public assistance caseload, processes an average of seven claims per worker in a day. [Albo, 2:50 pm.] The unit's expectation is that a worker should be able to complete a food stamp application in about an hour. [Exh. 14.] Ms. Albo and Ms. Bettis both concluded that the amount of work assigned to Appellant on Aug. 3rd was reasonable, given the importance of meeting the 95% timeliness rate set forth in the state's settlement agreement, a goal that was communicated to Appellant. [Bettis, 2/12/13, 10:16 am; Albo, 2/13/13, 1:36 pm.]

Ms. Albo determined that Appellant had neglected her duty and failed to do assigned work in violation of CSR §§ 16-60 A and J by not performing the research on the cases assigned to her. She found that Appellant was careless in her job performance because she failed to review the cases in the CBMS or WMS databases until well after the work deadline, failed to seek the help necessary to complete her tasks, and failed to assign her team the amount of work that needed to be done. Ms. Albo also found that Appellant made assignments after the fact in an effort to prove she did the work, and thus was dishonest in violation of CSR § 16-60 E.3.

Ms. Albo determined that Appellant violated her duty to perform her job with accountability, integrity and teamwork as required by the Employee Handbook based on her failure to work actively and with initiative on the assignment, and her failure to positively communicate with her staff in order to accomplish important Agency goals. She believed the investigation demonstrated that Appellant and one other supervisor were assigned to research and complete 97 overdue tasks over ten work days as a priority project, in addition to their regular work. Ms. Albo found that the assignment was reasonable, although they would have to "work very hard" to accomplish it. [Albo, 3:46 pm.] The computer database showed that Appellant accessed the overdue cases after the Aug. 17th discussion with her supervisors, but did not complete the tasks. [Exh. 16.] Ms. Albo concluded that Appellant's failure to perform her assignment contributed to the Agency's failure to meet its goal of processing 95% of food stamp applications in a timely manner for the six-month period ending Sept. 30, 2012, as required by the terms of settlement in Davis v. Henneberry. She found that Appellant's failure to perform was inconsistent with her duties as a supervisor to lead her team to accomplish important Agency goals.

Next, Ms. Albo weighed the question of the appropriate penalty for the above disciplinary violations. She considered the information presented by Appellant and her lack of any previous discipline. She also took into account the fact that Appellant took some responsibility for her conduct, and had shown by her previous performance that she had a heart for this type of work. Ms. Albo found that although Appellant made some bad choices in this instance, termination was not appropriate. On the other hand, she concluded that Appellant's failure to take the initiative necessary to contribute to the Agency's achievement of its legally-mandated performance goal demonstrated that Appellant was not well suited to perform her duties as supervisor in the Agency's Family and Adult Services unit. [Albo, 3:01 pm.]

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 demotion was within the range of discipline that can be imposed under the circumstances. In re Roberts, 40-10, 9 (11/15/2010); see also Department of Institutions v. Kinchen, 886 P.2d 700, 707 (1994), citing Colo. Const. art. XII, § 13(8).

A. VIOLATION OF DISCIPLINARY RULES

1. Neglect of duty under CSR § 16-60 A.

Appellant is first charged with neglect of duty under this rule, which requires proof that she failed to perform a job duty she knew she was supposed to perform. In re Compos, CSA 56-08A, 2 (CSB 6/18/09). Ms. Albo based this finding on her conclusion that Appellant failed to perform her assignment to research 45 tasks involving food stamp applications by Aug. 17, 2012.

Appellant does not dispute that she received this assignment on Aug. 3, 2012, and that she knew she was required to perform this work. Appellant submits that she was permitted to delegate the researching task to a member of her team rather than perform it all herself. I find that it made little difference to the Agency whether Appellant did the research herself or delegated it to a subordinate, as long as Appellant took action to ensure that the research was in fact completed. As found below, the evidence shows that Appellant and her team completed the research in 12 of the 45 overdue tasks. This equals about one-quarter of the 45 research tasks assigned. Since this did not establish that Appellant utterly failed to perform her duty to research the assigned tasks, I find that the Agency did not prove a violation of CSR § 16-60 A.

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

An employee is careless under this rule when she performs a duty poorly. In re Romero, CSA 01-12, 7 (4/17/12). The Agency claims Appellant was careless in carrying out her Aug. 3rd assignments because she failed to review the cases in the CBMS or WMS databases until well after the Aug. 17th deadline, and did not make timely assignments to her team to ensure that the work would be completed by the due date.

Appellant presented evidence that she made numerous work assignments to her team during the period at issue, and that she or her team was responsible for completion of 15 of the tasks. [Exh. KK.] She argues that completion of the assignment was nearly impossible because she was one of only two supervisors available between Aug. 6 and 14 to work on tasks created by a six-month backlog of overdue cases. In addition, Appellant was required to perform her regular work tasks including rotation duties, ten hearing requests, and review of the trainee's work. [Appellant, 2/13/13, 1:43 pm.] Appellant did not consider the Aug. 3rd project as a higher priority than her other work. [Appellant, 3/21/13, 11:07, 11:29 am.] She assigned 11 tasks for the overtime session on Aug. 11, but did not prepare or assign any of the tasks for the Aug. 18th session. [Appellant, 10:45 am; Exh. DD-1.] Appellant also argues that her six hours of FMLA leave during the week in question affected her ability to complete her assignment.

The Aug. 3rd assignment for two supervisors was to 1) research 45 overdue applications, and 2) prepare 97 applications for completion during upcoming overtime sessions. Appellant

was responsible for about half of those tasks. The number of overdue cases changed constantly as tasks were completed by various staff members, and the databases immediately reflected those changes to the numbers of pending and overdue tasks. At the time in question, a backlog of 879 tasks had already been reduced by 261 cases pending or otherwise not overdue. [Exhs. 12, 13.] Ms. Bettis' notes during this time identified 45 cases that needed research, and not more than 132 cases "left for remainder of month." [Exh. 12.] Thus, the assignment given to Appellant and Ms. Quezada was not to eliminate a six-month backlog.

Further, the assignment of researching 45 cases was reasonable and achievable over the seven work days of Ms. Bettis' vacation, given the undisputed evidence that the office average was completion of seven cases per day per worker and the fact that research is only part of that work. As to the other 97 tasks intended for the Saturday overtime sessions, Appellant was only expected to prepare the cases for overtime work, an assignment less time-consuming than performing research for the 45 applications then overdue.

Appellant asserts that she was confused about what tasks were overdue and thus included in the assignment. Appellant testified that she was given the list of overdue tasks on Aug. 3rd, and assigned 24 of the 39 tasks to members of her team. [Exh. 13.] Thereafter, Appellant prepared her own list of the 15 tasks she believes her team completed, using the list of overdue tasks. [Appellant, 3/21/13, 10:48 am; Exhs. 13, DD-1, L.] One of Appellant's team members, Toan Nguyen, completed one of the overdue tasks, but did not recall Appellant telling her it was part of a special project. [Nguyen, 2/13/13, 2:08 pm.] Appellant contends that another team member, Carole Spink, completed 13 of the overdue tasks. Appellant herself finished one of the overdue tasks. [Appellant, 2/13/13, 12:08 pm; Exh. L.] The tasks assigned to Appellant were clearly indicated in the three pages given to her on Aug. 3rd. Appellant's own lists demonstrate that Appellant was not confused about those tasks, which did not change from the date of the assignment to the due date.

Appellant did not seek either advice or assistance from Ms. Bettis or any other supervisor with regard to the Aug. 3rd assignment. Appellant only requested additional training on how to process food stamp claims after Ms. Bettis' return from vacation, although she admits it had been an ongoing issue even before that time. [Appellant, 1:47 pm.]

A comparison of Appellant's Exh. L with the overdue task list shows that Appellant and her staff completed 12 of those tasks by Aug. 17th.¹ Appellant failed to assign tasks on three of the seven days of the relevant period. [Exh. KK.] As shown by Appellant's emails to her subordinates and conceded in her testimony, Appellant did not consider the project as a priority, and therefore failed to focus her assignments on the tasks identified in the project. [Appellant, 3/21/13, 10:51, 11:07 am.] As a result, Appellant's supervisor was required to devote four hours to complete the assigned research upon her return from vacation. [Bettis, 3/21/13, 12:27 pm.] In addition, Ms. Bettis organized another intensive effort to complete the work in time for the Saturday overtime session. That effort included research using a special checklist, focus on high priority and overdue cases, and mitigation of other issues which could affect the Agency's contribution to the state's compliance with the settlement terms. During this remedial period, Ms. Albo made herself and her other supervisors available for consultation on compliance issues. Despite this additional effort, the Agency failed to meet the 95% timeliness rate set forth in the

¹ The following case numbers from Exh. L were completed before the Aug. 17th deadline: line items 3, 5-10, and 17-19. Those are identical to line items 3, 8, 31, 21, 23, 15, 6, 7, 1, 2, 10, and 26 on Exh. 13-2. Another four tasks on those exhibits were completed on Aug. 21 and 22, 2012. [See Exh. L, line items 20-22, 24.]

settlement. Ms. Albo testified that no other division failed to comply with their assignments related to the Sept. 30, 2012 deadline. [Albo, 2/12/13, 2:35 pm.]

Appellant also claims that she performed her duties diligently, and was prevented from completing all tasks by a computer glitch in WMS which prevented it from assigning tasks directly into workers' queues. Appellant has identified one overdue task that was affected by this problem. [Exh. W, line one; Exh. 13-4, line 6.] That item, Case No. 1B78732, does not appear on Exh. 15, the list of overdue tasks from which Appellant received her 45 research tasks. Ms. Bettis testified in rebuttal that she did not include 1B78732 in her investigation, and that Appellant was therefore not charged with failing to complete that task. [Bettis, 3/21/13, 12:23 pm.] In any event, correction of that error would have added only one more task to the 12 completed by Appellant and her team, an insignificant improvement in performance. Moreover, WMS's failure to automatically assign the task to a worker did not prevent Appellant from directly assigning that task to a staff member and ensuring its completion.

Finally as to this issue, Appellant argues that the Agency failed to produce in discovery an email dated Jan. 14, 2013 and state reports showing that Colorado Dept. of Human Services had 704 overdue tasks in Nov. 2012, and that those documents "could potentially mitigate" the seriousness of Appellant's misconduct. [Appellant's closing argument, p. 2.] Appellant's motion for discovery and the order granting it were limited to the documents and three-month period specific to Appellant's Aug. 3rd assignment. Thus, the referenced email and reports were not covered by the discovery order. In addition, Appellant had the opportunity to obtain evidence in mitigation during the cross-examination of the Agency's management witnesses, and did so.

I find that Appellant understood the assignment, completed the research in 12 of the 45 overdue tasks, but failed to ensure that the research was completed in all the tasks assigned to her team. Appellant was not prevented from completing the work because of her six hours of FMLA leave, as she could have and did delegate some of the work to her staff. I find that Appellant's failure to complete the research on the remaining 32 overdue tasks and to assign the work on the 97 overtime tasks constitutes carelessness in the performance of her Aug. 3rd priority assignment.

3. Dishonesty in violation of CSR § 16-60 E. 3.

An employee violates this rule when she knowingly makes misrepresentations within the employment context. In re Rodriguez, CSA 12-10, 7 (10/22/10). The word "lying" as used in the rule has been defined by the Career Service Board as having been uttered with the intent to convey false information. In re Kelly, CSA 64-11A (CSB 4/4/13). Ms. Albo determined that Appellant violated subsection 3 of this rule based on her finding that Appellant assigned work after the deadline in an attempt to prove that she did the work. The evidence failed to support that conclusion. Appellant testified that she accessed each of the tasks in WMS in order to research and rebut the Agency's claim that she had not worked on the tasks assigned. Appellant had a continuing duty to assign work on overdue tasks even after expiration of the Aug. 17th deadline. The Agency did not prove that her entries falsified the dates she accessed the cases or assigned the tasks. Likewise, the Agency did not present evidence that Appellant lied to her supervisors by claiming she had completed the work earlier, or that she falsified records about her duties, falsely reported her work hours, or took any other action intended to mislead the Agency or her supervisors. Therefore, the Agency failed to establish a violation of this rule.

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

This portion of the above rule requires proof that a supervisor assigned work which the employee was capable of performing, and the employee failed to do the work under circumstances demonstrating willfulness. In re Rodriguez, CSA 12-10, 7-8 (10/22/10). Willfulness may be inferred from the conduct in question. In re Dineen, CSA 56-11A (CSB 12/20/12).

As found above, Appellant failed to complete the research in Appellant's 32 of the 45 overdue tasks she was assigned to research, and failed to assign the work on the 97 overtime tasks. Appellant was capable of ensuring that these tasks were completed, as shown by her work in completing 12 of the research tasks and in assigning a great number of cases during Ms. Bettis' vacation. Appellant chose not to treat the assigned cases as a priority project because she believed all of her work should be given equal priority. As a result, Appellant chose to assign other, non-priority tasks to her team. Her failure to assign cases in accordance with orders from her managers established that her failure to complete the work was willful on her part. Thus, the Agency proven that Appellant violated Career Service Rule § 16-60 J.

5. Failure to meet established standards of performance under CSR § 16-60 K.

In order to prove an employee violated this rule, the agency must prove 1) it established a standard; 2) it clearly communicated the standard; and 3) the employee failed to meet that standard. In re Rodriguez, CSA 12-10, 9, 10 (10/22/10). The disciplinary letter cites Appellant's general duties from her 2012 Performance Enhancement Plan in support of its finding that Appellant violated this rule. However, the Agency offered no evidence in support of this finding, and I am unable to identify the specific standard of performance violated by Appellant's conduct. See In re Gutierrez, CSA 65-11A (CSB 4/14/13) (holding that broad, general job descriptions are not enforceable as standards of performance.) The Agency therefore failed to establish a violation of this rule.

6. Failure to observe departmental regulations under CSR § 16-60 L.

To prove a violation of this rule, the Agency must prove only that there was a written policy, the employee was aware of the policy, and the employee failed to follow the policy. In re Rodriguez, supra, at 13.

Ms. Albo found that Appellant's failure to complete the priority assignment constituted a violation of the Employee Handbook's description of the DHS Vision that employees should demonstrate accountability, integrity and teamwork. Those words state general aspirational goals for all employee conduct, and fail to give notice of specific behavior that may fall afoul of those standards. A broad, general statement included as an agency vision cannot be enforced against an individual employee where the context gives no notice that it is intended to set forth a specific rule of conduct. In re Gutierrez, supra. Therefore, this violation was not established by the evidence.

B. DEGREE OF PENALTY

The Agency imposed a demotion from Case Management Supervisor to Case Management Coordinator as the disciplinary level it believed was most appropriate for the rule violations alleged. Appellant asserts that a permanent demotion was overly harsh for her actions in light of the absence of previous discipline, and the difficulty of completing the entire assignment in the time allotted.

Appellant was hired as a supervisor in 2006, and received good performance evaluations from her previous supervisor. [Exhs. T, U.] When Ms. Albo assumed leadership of the Division, that supervisor was removed for her failure to hold her staff accountable. Ms. Albo then hired Ms. Bettis, and directed her to set and enforce firmer performance standards with the aim of meeting the timeliness rates set out in the state settlement agreement. Thus, Ms. Albo did not give much weight to Appellant's evaluations from the previous supervisor. [Albo, 2/12/13, 3:40 pm.]

As found above, Appellant violated CSR §§ 16-60 B and J by carelessness in performing her priority task, and in failing to complete assigned work despite orders from her managers. As the work was designed to ensure that the Agency met its Sept. 30th goal under the terms of the state settlement, this failure resulted in an emergency reworking of the project in an attempt to comply with the state deadline, an effort that ultimately failed despite a large amount of extra work for her supervisor, co-workers and subordinates. Thus, Appellant's failure to do her assigned work had serious consequences for the Agency.

The decision to demote was based upon the Agency's assessment that Appellant did not possess the skills to perform the job of supervisor. The job of supervisor required her to determine work priorities and ensure that federal reporting deadlines were met. Appellant testified that she did not view or treat the project as a priority, because she believed all of her work was equally important. The Agency's penalty assessment was based solidly on its conclusion that Appellant failed to understand the nature of her supervisory duties. Ms. Albo considered and rejected termination, given Appellant's previous history and her interest and "heart" for the work of the Agency. Clearly, the Agency strove to select a penalty that was most closely suited to correct the situation and achieve the desired performance, in the best interest of the Agency and its mission.

I find that the Agency considered the severity of the misconduct, Appellant's disciplinary and employment history, and weighed all relevant factors in determining the discipline most likely to achieve compliance with the rules. CSR §§ 16-20, 16-50. Based upon all the evidence presented, I cannot conclude that demotion was clearly excessive or not supported by substantial evidence. Under these circumstances, the Agency's disciplinary action may not be disturbed. In re Owens, CSA 69-08, 8 (2/6/09).

Order

Based on the foregoing findings of fact and conclusions of law, it is hereby ordered that the Agency's demotion action dated October 17, 2012 is AFFIRMED.

DONE May 23, 2013.



Valerie McNaughton
Career Service Hearing Officer