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

Appeal No. 44-07

FINDINGS AND ORDER

IN THE MATTER OF THE APPEAL OF:

GEOFFREY STRASSER,

Appellant/Respondent,

vs.

DEPARTMENT OF PARKS AND RECREATION, and the City and County of Denver, a municipal corporation,

Agency/Petitioner.

This matter is before the Career Service Board ("Board") on the Agency's Petition for Review. The Board has reviewed and considered the full record before it and **AFFIRMS in part, REVERSES in part,** and **MODIFIES** the Hearing Officer's Decision dated October 16, 2007, on the grounds outlined below.

I. FINDINGS

Appellant was terminated by the Agency on July 16, 2007, for accessing pornography on a City-owned computer and showing at least one pornographic image to a 17 year old male intern. At the time of his termination, Appellant held the position of Assistant Golf Professional and had been employed by the Agency for 18 years. The Hearing Officer modified Appellant's termination to a 30 day suspension.

Without question, Appellant engaged in inappropriate workplace activity that directly violated the City's internet usage policy and related Career Service Rules (CSR) 15-82, 16-60 D. and 16-60 Y. However, the issues presented in this appeal are whether Appellant also violated CSR 16-60 O. and 16-60 Z., and whether his termination was consistent with the career service principles of discipline.

CSR 16-60 O.

This career service rule provides that a City employee may be disciplined for failure to maintain satisfactory working relationships with co-workers, other City

employees, or the public. A violation of this rule, the Hearing Officer reasoned, requires some significant breakdown in the working relationship. Because Appellant was placed on investigatory leave then fired without working with the intern again, the Hearing Officer concluded that the Agency failed to prove a significant breakdown in their future working relationship. The Board finds this interpretation of CSR 16-60 O. too narrow and fails to take into account the unique circumstances of this case.

The Hearing Officer made a specific finding that the intern was uncomfortable with Appellant's actions in accessing and showing him pornography. In fact, the young man testified: "I didn't think that one of my bosses would ever do something like that." Transcript, 145: 9-11. He felt strongly enough about the incident to make a copy of the computer's internet history so he could provide Appellant's supervisor with each internet site Appellant had accessed. Exhibit 2, pp. 71-75. While the Board agrees with the Hearing Officer that CSR 16-60 O. should not be used as a bludgeon against all offensive interactions in the workplace, nevertheless, the young man's age, his status as a high school intern being supervised by adult employees of the Golf Division, and his reaction to the incident are all significant factors. Within this unique adult/minor working relationship, Appellant had the responsibility to not only supervise and instruct, but to also set an example for appropriate adult behavior in the workplace. We find that under the circumstances, the Agency satisfied its burden of proving that Appellant failed to maintain a satisfactory working relationship within the meaning of CSR 16-60 O.

CSR 16-60 Z.

Under CSR 16-60 Z., a City employee may be disciplined for conduct that is prejudicial to the good order and effectiveness of the department or agency, or conduct that brings disrepute on or compromises the integrity of the City. Focusing on the first part of the rule, the Hearing Officer concluded that a violation would require proof of conduct that hindered an agency's effectiveness, i.e., its ability to carry out its mission, or proof of conduct that was prejudicial to an agency's good order, i.e., the internal structure and means by which it achieves its mission. In essence, the Hearing Officer determined that a violation, at least as to the first part of the rule, would require proof of some kind of injury.

However, as the Agency points out in its brief, there is a second part of the rule that focuses on conduct that brings disrepute on or compromises the integrity of the City, and while the Hearing Officer did not specifically address this portion of the rule, the Board adopts the Hearing Officer's reasoning that a violation would require proof of actual injury to the City's reputation or integrity. To find otherwise would render CSR 16-60 Z. simply a "catch-all" provision offering City employees no guidance as to the standards by which their conduct will be measured, while allowing City agencies to impose discipline based solely on subjective views of potential harm.

Obviously, the kind of injury necessary to prove a violation of CSR 16-60 Z. will have to be decided on a case by case basis. Here however, the Agency argues that Appellant's actions brought disrepute on the City because the intern's parents were angry

and threatened to sue. But as Appellant points out in his brief, the only evidence about the parents' reaction was ruled inadmissible on a hearsay objection. See, Transcript, 26: 9-19. The intern's parents did not testify at the hearing and whether such testimony would have or could have established injury to the City's reputation or integrity is not before us today. Therefore, the Board agrees with the Hearing Officer that, based on the evidence in the record, the Agency failed to prove that Appellant's actions violated CSR 16-60 Z.

Degree of discipline

The purpose of discipline is "to correct inappropriate behavior or performance if possible." CSR 16-20. In addition, "whenever practicable, discipline shall be progressive." CSR 16-50 A. 1. Certainly, as the Hearing Officer recognized, termination of employment may be appropriate for a single egregious event that results in substantial harm or violates a fundamental tenet of an agency's mission, but where possible and practicable, the purpose of discipline under the career service rules is intended to be corrective rather than punitive. That being said, finding the appropriate level of corrective discipline is not always an easy task.

The Hearing Officer considered a variety of factors (i.e., the nature of the offense, the intern's age, Appellant's 18 years of service, his prior disciplinary record consisting only of a 2006 written reprimand, his admission of some wrongdoing, and his apology at the pre-disciplinary meeting) in concluding that Appellant would be able to correct, and not repeat, his mistakes, and therefore, the corrective purpose of discipline under CSR 16-20 was not served by dismissal. The Hearing Officer modified the discipline to a 30 day suspension; however, this modification was based, in part, on the Hearing Officer's finding that Appellant had violated only those career service rules related to the City's internet policy. While the Board agrees that dismissal is not appropriate in this case, the Board has also found that Appellant violated CSR 16-60 O., and based on his prior written reprimand, this is Appellant's second disciplinary action for failure to maintain satisfactory working relationships. Given all the circumstances presented in this case, the Board finds that the appropriate level of discipline is a 90 day suspension.

ORDER

IT IS THERFORE ORDERED that the Hearing Officer's Decision of October 16, 2007, is **REVERSED** as to CSR 16-60 O., **AFFIRMED** as to CSR 16-60 Z., and **MODIFIED** to a 90 day suspension, consistent with the Board's Findings herein.

SO ORDERED by the Board on February 21, 2008, and documented this 29th day of February, 2008.

BY THE BOARD:

Luis Toro

Luis Toro, Co-Chair

Board members concurring:

Tom Bonner
Kit Williams

CERTIFICATE OF DELIVERY

I certify that I delivered a copy of the foregoing **FINDINGS AND ORDER** on 2/29/08, 2008, in the manner indicated below, to the following:

Casey D. Paison, Esq., caseypaison07@comcast.net (via email)

Geoffrey Strasser, strassergff@aol.com (via email)

Robert A. Wolf, Asst. City Attorney, dlefiling.litigation@denvergov.org (via email)

David Jerrow, David.Jerrow@denvergov.org (via email)

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

Jenna Davis