HEARING OFFICER, CAREER SERVICE BOARD  
CITY AND COUNTY OF DENVER, COLORADO  
Appeal No. 13-14

DECISION AFFIRMING DISMISSAL FROM EMPLOYMENT

IN THE MATTER OF THE APPEAL OF:

JESSE TREJO, Appellant.

vs.

DENVER PUBLIC WORKS, WASTEWATER MANAGEMENT DIVISION,  
and the City and County of Denver, a municipal corporation, Agency.

I. INTRODUCTION

The Appellant, Jesse Trejo, appeals his dismissal from employment with the Wastewater Management Division of Denver Public Works (Agency) on March 13, 2014, for alleged violations of specified Career Service Rules. A hearing concerning these appeals was conducted by Bruce A. Plotkin, Hearing Officer, on June 25 and July 3, 2014. The Agency was represented by Richard Stubbs, Assistant City Attorney, while the Appellant was represented by Sean Olson, Esq. The following Agency exhibits were admitted: 1 through 10; 11-2 through 11-7; 13; 14; 15-1; 17-1 through 17-24; 18; 19; and 20. Appellants' exhibits were admitted as follows: A; C-1 through C-7; E; B-2; B-3; B-4; B-5; B-10; G-140 through G-145, G-150 through G-153, and G-155. The following witnesses testified for the Agency: the Appellant; Josh Cordova; William Lucero; Ahmed Soufiani; Ed Bagwell; and Reza Kazemian. The Appellant testified on his own behalf, and presented testimony from witness Ed Bagwell.

II. ISSUES

The following issues were presented for appeal:

A. whether the Appellant violated any of the following Career Service Rules: 16-60 A; E; J; or K; and

B. if the Appellant violated any of the aforementioned Career Service Rules, whether the Agency's decision to dismiss him conformed to the purposes of discipline under CSR 16-20.

III. FINDINGS

The Appellant, Jesse Trejo, began working in the Agency in 1991. He became an Equipment Operator in 1999, and remained in that position until his dismissal. During his 6:30 a.m. to 3:00 p.m. shift, his primary duties were to operate light to medium sized equipment. His duties included raising or lowering manhole covers to bring them to grade level. He was also responsible for "locating" Agency underground lines by spray painting surface markings in order to apprise contractors of sewer and storm line locations before digging in public streets and rights-of-way. Underground lines belonging to other utility companies, such as Denver Water, are located separately by those entities.

As an Equipment Operator, Trejo was expected to carry out daily assignments with minimal oversight. Because Equipment Operators function with little oversight, honesty regarding the
carrying out of assignments is critical to the function of the Agency. The Agency fired Trejo based on his performance and explanations for his work on October 3, 2013, October 15-16, 2013, and December 30, 2013.

A. **The October 3, 2013 assignment.**

On October 3, 2013, Trejo’s supervisor Josh Cordova assigned Trejo’s crew to lower four manholes near Alameda and University, and to raise four manholes near Glencoe and Plum Court. Cordova initially assigned Powell as the lead worker, meaning Powell would be ultimately responsible for timely completion of the assignment and for submitting appropriate documentation at the end of the shift. Powell told Cordova he was already scheduled to attend a class and would be absent for a portion of the day. There was an unresolved dispute whether Cordova then reassigned the lead position to Trejo. Paperwork submitted to Cordova at the end of the day indicated all assigned work, including raising four manholes at Glencoe and Plum, was complete. [Exhibit 11]. Later, supervisors Lucero and Cordova drove to the job site and found none of the manholes at Glencoe and Plum had been raised.

B. **The October 15, 2013 assignment.**

On October 15, 2013, Trejo was assigned 10 locates. He completed four. It is the responsibility of the Equipment Operator to call his supervisor to report any issues with completing an assignment and to call to obtain additional work if the E.O. finishes an assignment early. Trejo did neither.

C. **The December 30, 2013 assignment.**

At the beginning of his shift on December 30, 2013, Trejo received an assignment to do seven locates. At 1:30 p.m. Trejo called his supervisor to announce he completed the assignment. He also submitted paperwork indicating he completed all assigned work. Trejo completed only four of the seven locates. Two of the remaining locates were not required to be done for reasons beyond Trejo’s control, leaving one locate which should have been done and was not - 13th and Poplar. All assigned locates should have taken approximately two hours to complete.

A pre-disciplinary meeting was held on January 13, 2014. Trejo attended with legal counsel. Trejo denied all wrongdoing. Based on Trejo’s statements and those of his attorney, a second pre-disciplinary meeting was convened on February 27, 2014. During that meeting, Trejo acknowledged the Agency assigned locates to him which he did not complete. On March 13, 2014, the Agency issued its notice of dismissal, effective the same day. This appeal followed timely.

**IV. ANALYSIS**

A. **Jurisdiction and Review.**

Jurisdiction in this venue 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, throughout the case, to prove the Appellant violated one or more cited sections of the Career Service Rules, and to prove its decision to dismiss the Appellant employment complied with CSR 16-20. The standard by which the Agency must prove its claims is by a preponderance of the evidence.
C. Career Service Rule Violations

1. CSR 16-60 A. Neglect of Duty.

To sustain a violation under CSR 16-60 A, the Agency must establish that appellant failed to perform a known duty. In re Gomez, CSA 02-12 [5/14/12] citing In re Abbey, CSA 99-09, 6 [8/9/10]. The Agency claimed Trejo violated this rule by failing to begin work on time and failing to raise four manholes on October 3, 2013; failing to complete four of 10 locates assigned on October 15; failing to leave the yard by 7:00 a.m. on October 16; and failing to complete an assigned locate on December 30, 2013. Trejo responded he either completed the work assigned, was not responsible for it, or had good cause not to complete it.


The Agency claimed Trejo was aware he should have begun work at his first assignment at University Blvd and Alameda Ave. by 8:00 but neglected to do so. [Cordova testimony; Soufiani testimony; Kazemian testimony]. Trejo replied there is a widely-known and practiced "8:30 rule" which applies to busy rush hour intersections. He testified Agency crews are expected to wait until 8:30 a.m. to avoid making rush-hour traffic worse. [Trejo testimony]. Lavies Powell, a friend and co-worker of Trejo, affirmed the 8:30 rule and alleged it applied to the University and Alameda location when they were assigned there on 10/3. [Exhibit 9]. Trejo also pointed to Exhibit 18 as proof of the 8:30 rule; however that document clearly applies only to contractors and not employees of the City. No member of management ever heard of the 8:30 rule.

On this issue, neither side was more credible than the other. In the absence of written proof of a work rule - in this case, that work must begin by 8:00 - and where neither side is more credible than the other, the Agency cannot establish notice by a preponderance of the evidence, an essential element of this rule. Consequently, the Agency failed to establish this violation.

The Agency also claimed Trejo violated this rule on October 3 because he was the lead worker that day and his crew failed to raise four manholes at Glencoe and Plum, although he had ample time. [Kazemian testimony; Soufiani testimony; Cordova testimony; Lucero testimony]. Trejo insisted he was not the lead worker and therefore not responsible for the work that was or was not done, and the reason his crew did not finish was because they were called to another location to help a co-worker, Darrell Wilson, raise two manholes at another location.

There is little doubt the four assigned raises at Glencoe and Plum were not done, since another crew was sent to do the same work on October 23. [Cordova testimony]. There is also little doubt the crew had ample time to complete their assignment even if they assisted Wilson with two other manholes;1 but there was conflicting evidence regarding the most important fact: who was the lead worker on October 3, 2013, and therefore responsible for completing the assignment?2 Cordova distinctly remembered assigning Powell as the lead, then reassigning the lead to Trejo when Powell stated he had to attend a mid-morning class. Trejo disagreed. Both sides acknowledged Powell returned to the crew before noon. The October 3 work order, [Exhibit 11-1], showed Powell was the lead worker, as indicated by his name next to "completed by." Cordova explained he made an error in placing Powell's name there instead of Trejo, but remembers assigning Trejo as lead and remembers Trejo throwing down the paperwork at the end of the day, muttering the job was finished. [Exhibit 2-2; Cordova

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1 For reasons stated elsewhere in this Decision, Soufiani's testimony was highly credible. He testified that raising a manhole requires no more than 15 minutes. Thus, the four assigned manholes should have taken no more than 1 hour plus another 30 minutes for the additional assistance to Wilson to raise two manholes. Adding travel time of 30 minutes to and from Wilson's location, the total for all six manholes required no more than 2 hours in an eight-hour shift.

2 The Agency did not allege all crew members were equally liable for completion of assignments.
testimony]. Again, Trejo disagreed. In addition, Trejo claimed Cordova was antagonistic
toward him after they both vied to become crew chief in November 2012, and the position was
awarded to Cordova. Cordova denied any antagonism and denied Trejo's allegation that he
never assigned Trejo as crew supervisor after November 2012. It was apparent the two dislike
each other, but it was unclear if Cordova's attitude toward Trejo translated to dishonest
testimony.

The above-stated evidence regarding whether Trejo was the lead worker on October 3
was inconclusive. Without establishing that key fact, the Agency failed to establish Trejo
violated 16-60 A by failing, as lead worker, to complete the October 3 assignment. 3


The Agency claimed Trejo was aware of, but neglected, his duty to leave the yard by 7:00
a.m. Trejo stated he never heard of the rule before that day. Alternatively, Trejo stated he was
speaking with a co-worker about a work matter from 7:00 to 7:20 a.m.

As proof of its claim, the Agency showed an image of a large sign posted in a work area
stating "out of the yard by 7:00 am. No excuses." [Exhibit 17-24]. Trejo countered that the area
where the sign is posted is not one he frequents. [Trejo testimony]. Kazemian testified the rule is
"well-known." Alone, that assertion is insufficient proof that Trejo was aware of it; however, M.C.
Romero, Trejo's second-level supervisor, testified he told Trejo about the rule at a team meeting
on October 14, 2013, and Trejo did not raise a credibility issue with regard to Romero. This
neglect violation is proven by a preponderance of the evidence.

The Agency also claimed Trejo failed to put in a full day's work on October 15 when he
performed only 4 out of 10 locates assigned to him for that day, and did not call in or otherwise
indicate any issue with completing them at the time. Trejo acknowledged he was assigned 10
locates, and that he worked alone that day, [Trejo testimony]. While he disputed that he
wrongfully remained in the yard after 7:00 a.m. and disputed that he returned to the yard early,
at 1:45 p.m., Trejo failed to explain why he could not successfully complete his assignment that
day, and why he failed to notify his supervisor that he would be unable to complete the
assignment. He testified he did as many as he could (four out of ten locates). Such explanation
fails to rebut the Agency's assertions. The Agency proved this neglect violation by a
preponderance of the evidence.


For this claim, the Agency charged Trejo failed to perform a complete day's work on
December 30, 2013. The Agency's focus was the locates at the intersection of 13th Ave. and
Poplar St. Trejo acknowledged he did not complete the assignment at that location as
indicated on his Service Request. [Trejo testimony].

Trejo's assignment at that location, according to the Locate Details on the contractor's
Service Request, [Exhibit C-7], was to mark 3312 linear feet south, from 13th and Poplar, to
Severn Place, specifically along the east side of Poplar St. [Id]. Trejo did not document what
work he completed at location. [Id]. He explained he did not mark the location as the
contractor requested because he (Trejo) determined there were no Agency assets to mark on
the east side of Poplar St., as the Agency storm line runs under the center of the street pursuant
to the map that accompanied his locate. [Trejo testimony; Exhibit 19]. Trejo testified he tried,
unsuccessfully to call the contractor to discuss the issue, then called a supervisor, Lucero, about

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3 The Agency also alleged Trejo neglected a well-known duty not to return to the yard before 2:30-2:45, but returned at 1:45 p.m. on
October 3. Trejo acknowledged he knew that rule, but for the same reasons stated immediately above, the Agency failed to prove Trejo was
the lead worker, and therefore failed to prove this violation as well.
the issue. According to Trejo, Lucero directed him to mark only the manholes and direction of flow of the storm line on the manholes, then directed Trejo at about 1:30 p.m. to return to the yard to do maintenance work for the remainder of his shift. [Trejo testimony].

Lucero disputed that Trejo completed his assignment at 13th and Poplar. Lucero went to the location three days later with Soufiani. Both observed eight manholes out of 21 in the area marked, but saw no street markings. Both testified there is no reason to mark manholes since the manhole locations are obvious. [Lucero testimony; Soufiani testimony]. Trejo raised no concern about the credibility of either of these witnesses, and there is no evidence in the record why either would require Trejo to mark manholes when each believed such a practice is pointless.

Moreover, the exhibits clearly indicate that, while two of the blocks Trejo was supposed to mark contain only a storm drainage line running down the middle of Poplar street, there is also a sanitary sewer line running down the east side of Poplar Street for two blocks of the area to be marked. [Exhibit C-7; Exhibit 19]. In short, it appears Trejo saw nothing to mark on the east side of the first block of the map, then ignored the remainder of the area to be marked. Consequently, Trejo’s explanation, that he marked only manholes pursuant to the order is less credible than his supervisors’ denial. The Agency proved this neglect claim.

2. CSR 16-60 E. Any act of dishonesty...


Kazemian testified Trejo lied when he denied Cordova made him lead worker on 10/3/13. Trejo disagreed. He denied that Cordova assigned him as lead worker and denied turning in paperwork at the end of the day. As determined above, the evidence was inconclusive. This allegation is not proven.

Kazemian also claimed Trejo violated the rule against dishonesty as a waste of taxpayer money. [Kazemian testimony]. While perhaps indicative of a breach of some other rule, Kazemian’s claim is unrelated to dishonesty.

Trejo testified at hearing that his crew did not finish their afternoon assignment on 10/3/13, to locate and raise four manholes at Glencoe and Plum. His principal contention was that, due to the time required to help Wilson locate and raise two manholes, there was insufficient time left to locate and raise two of the four assigned manholes at Glencoe and Plum.

Agency witnesses were consistent in their testimony that raising a manhole should require no more than 15 minutes. [Cordova testimony; Kazemian testimony; Lucero testimony; Soufiani testimony]. Trejo claimed the manholes for Wilson were buried under at least four inches of asphalt and required up to 45 minutes each [Trejo testimony]; but Soufiani, who testified at great length and with great credibility, replied re-paving is always a maximum of 1.5 inches and he has carefully timed various raises and lowers. Trejo did not rebut Soufiani’s testimony. Since the assistance that Trejo’s crew provided to Wilson’s crew should have taken no more than 30 minutes then, even adding travel time, there was ample time for Trejo’s crew to finish the four assigned manhole raises at Glencoe and Plum Court. Thus, by a preponderance of the evidence, Trejo was dishonest in claiming there was insufficient time for his crew, regardless whether he was the lead worker, to finish their assignment on October 13.


Kazemian alleged Trejo was dishonest in the following ways on 10/15: Trejo lied about the reasons for being unable to complete locates assigned to him that day; he lied when he claimed he did not return to the yard before 2:00 p.m.; and Trejo falsified his record of having
completed all work assigned that day. [Exhibit 2-4; Kazemian testimony]. Trejo countered that he always acknowledged he did not complete the 10/15 locate assignment and therefore was not dishonest. He testified he completed as many locates as he could, and stated he returned to the yard that day at 2:05, not at 1:45 as alleged by the Agency. Trejo added he was well-aware of the requirement not to return to the yard before 2:00 p.m. [Trejo testimony].

Trejo acknowledged he never notified his supervisor that he did not finish his locates on 10/15/13. He testified he completed only 4 of the 10 assigned locates due to the distance between them and the extent of work they required. [Trejo testimony]. While Agency witnesses were consistent in their testimony regarding the length of time for the average locate, there was no testimony regarding the field conditions at the time for the stated location, without which the Agency’s generalized characterization of the time required to complete an assignment was insufficient to outweigh Trejo’s denial. This instance of dishonesty remains unproven.


The Agency alleged Trejo lied when he claimed not to know the Agency’s rule that all workers must leave the yard by 7:00 a.m. Several Agency witnesses testified it is a well-known rule. Some Agency witnesses testified the rule was announced at a meeting, and the Agency cited Exhibit 17-24, showing a picture of the notice. Trejo denied hearing of the rule before 10/16. He claimed the meeting at which the notice was announced was a supervisor-only meeting. Kazemian acknowledged the meeting during which the 7:00 a.m. rule was announced was for supervisors only, but expected the information would be transmitted down the ranks. [Kazemian cross-exam]. Such an expectation fails to rise to the level of a preponderance of the evidence.

Also, Trejo explained that, while he was still in the yard until 7:20, he was talking about a work matter with a co-worker. Lucero countered he saw Trejo sitting alone during that time. In all, the evidence was not more favorable to the Agency than to Trejo, thus this instance of dishonesty remains unproven.


The rule against dishonesty includes “lying to supervisors... with respect to official duties, including work duties....” [CSR 16-60 E. 3]. The Agency claimed Trejo was dishonest for stating he completed his assignment, specifically at 13th and Poplar, on December 30. [Kazemian testimony]. Trejo stated there was no point in marking the street as indicated since no Agency assets are located as indicated on the Service Request, Exhibit C-7. He stated that he completed that assignment, which included the requirement to mark 3212 feet of road, by marking several nearby manhole covers. It was already proven that Trejo likely knew that marking manhole covers was not an approved method to conduct a locate, and that an Agency asset was in fact located on the east side of Poplar Street within the parameters of the assignment.

The day following Trejo’s 12/30 assignment, Soufiani accompanied Lucero to the 13th and Poplar location where they found Trejo marked none of the required 3212 linear feet of the Agency’s line, as requested by the contractor. [Exhibit C-7].4 Two days later, on January 2, 2014, Soufiani reenacted the entire 12/30 assignment to Trejo, including timing each activity at each location. Soufiani’s detailed account was entirely credible and his testimony was left unrebutted. He observed only one lateral line properly marked for about 40 linear feet at one

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4 The contractor requested the Agency to mark its assets located on the east side of Poplar Street from 13th Ave., south to Severn. [Exhibit C-7]. The Agency, per protocol, then produced a map for that particular location. [Exhibit 19] which it provided to Trejo. That map shows the Agency has two lines within those parameters, but its line on the east side of Poplar, a sanitary sewer, extends only 928 linear feet, beginning south of 12th Ave, and terminating at 11th. [Exhibit 19, Exhibit 17-22; Soufiani testimony].
intersection. [Exhibit 17-2, 17-3], and some manhole covers marked in the area. [Exhibits 17-5, 17-10 through 17-13]. However, none of the required 3212 linear feet of the area was marked as requested by the contractor. [Soufiani testimony; Exhibit 17-1 through 17-11]. Soufiani measured exactly 928 linear feet of Agency sanitary sewer line in the area indicated on the Service Request. [Exhibit 17-22; Soufiani testimony; Exhibit C-7]. Based on the Agency's unrefuted testimony and exhibits, Trejo was dishonest in claiming he completed his assignment at 13th and Poplar on 12/30/13.

3. CSR 16-60 J. 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. October 3, 2013

The allegations under this rule function independently of whether Trejo was assigned as the lead worker on 10/3/13. The parties substantially disagreed as to the time it should take to raise or lower an average manhole. Trejo claimed his crew, [regardless whether he was the lead worker], had insufficient time to complete the day's assignment. One reason, explained Trejo, was the extensive time required to raise or lower a manhole. He testified the time depends on how thick the resurfacing material is, the kind of material and other factors, but it could take up to 45 minutes or more. Agency witnesses were consistent in testifying those activities take no more than 15 minutes. [See above]. For reasons stated above, Agency witnesses were more credible on this point, in particular Soufiani's uncontested testimony based on his extensive experience both as a worker and supervisor. Consequently, the Agency proved Trejo was capable of, but failed to perform assigned work, in violation of CSR 16-60 J. Whether he failed to comply with a supervisor's orders depends on whether he was the lead worker on 10/3, and that fact remained unproven.

b. October 15, 2013

The Agency stated Trejo was assigned 10 locates on 10/15/13 and failed to complete them, although the locates should only have required approximately 10 minutes apiece. [Exhibit 2-4; Lucero testimony; Soufiani testimony; Cordova testimony]. For the reasons stated above, the Agency's testimony was more likely true, that locates require little time. Also, as decided above, Trejo failed to explain adequately why he failed to complete 6 out of 10 assigned locates that day. This violation under CSR 16-60 J is established for Trejo failing to comply with a lawful order and for failing to do assigned work Trejo was capable of performing.

c. December 30, 2013

The same analysis which applied above, under 16-60 A. Neglect and 16-60 E. Dishonesty, applies in equal measure here. The Agency established Trejo's violation of 16-60 J. by a preponderance of the evidence.

4. CSR 16-60 K. Failing to meet established standards of performance including either qualitative or quantitative standards.

The decision-maker, Director of Wastewater Reza Kazemian, claimed Trejo violated this rule for failing to meet a performance review (PEPR) standard. The standard states “[p]erforms general laboring duties for projects that the equipment is assigned to. Ensures that daily work plans are carried out in an efficient manner.” Kazemian stated Trejo failed to meet that standard on 10/3/13, 10/15/13 and 12/30/13.

5 Normally multi-page exhibits such as #17 would be marked sequentially as 17-1, 17-2 etc. but the photographs here are marked only as ‘Photo 1, Photo 2, etc. For consistency in describing exhibits, I refer to these as 17-1, 17-2, etc, even though they are not marked as such.
6 Trejo was not required to mark the Denver Water Dept. manhole shown in #17-12 and 17-14. [Soufiani testimony]. Photos 17-15 through 17-17 show another location assigned on 12/30, unrelated to 13th and Poplar.
While the Agency failed to prove Trejo was the lead worker on 10/3/13, Trejo admitted he failed to complete his tasks on that date. The work assigned, as previously determined, was entirely within his capabilities and time allotted. Thus, Trejo violated this performance standard on 10/3/13. Trejo also failed to meet this performance standard on 10/15/13 and 12/30/13 when he completed only four of ten assigned locates on 10/15 and failed to mark the sanitation line per protocol on 12/30, since he had the means, knowledge, ability, and time to do so.

V. DEGREE OF DISCIPLINE

The purpose of discipline is to correct inappropriate behavior if possible. Appointing authorities are directed by CSR 16-20 to consider the severity of the offense, an employee’s past record, and the penalty most likely to achieve compliance with the rules. CSR § 16-20.

A. Seriousness of the proven offenses

Since equipment operators function with substantial independence and little oversight, honesty is of paramount importance. [See Kazemian testimony]. Taken separately, it is unlikely any one of the proven violations would merit termination. However the pattern which emerged from the amalgam of violations was Trejo’s indifference to performing even the basic requirements of a job that is not difficult and not time consuming.

B. Prior Record.

Trejo had three minor violations over a twelve year period. None was a significant factor in this discipline. However, when the proven violations are serious or likelihood of reform remote, this factor does not mitigate the other two.

C. Likelihood of Reform.

Trejo accepted no responsibility for failing to carry out basic, uncomplicated assignments well within his capabilities. The Agency was therefore justified in finding little likelihood of reform.

VI. ORDER

For reasons stated above, the Agency’s termination of the Appellant’s employment on March 13, 2014, is AFFIRMED.

DONE August 5, 2014.

Bruce A. Plotkin
Hearing Officer
Career Service Board