

**HEARING OFFICER, CAREER SERVICE BOARD
CITY AND COUNTY OF DENVER, COLORADO**

Appeal No. 78-06

DECISION

IN THE MATTER OF THE APPEAL OF:

DENISE LORRAINE BUTLER

Appellant,

vs.

DEPARTMENT OF HUMAN SERVICES,

and the City and County of Denver, a municipal corporation,
Agency.

The hearing in this appeal was commenced on Nov. 21, 2006 before Hearing Officer Valerie McNaughton. Appellant Denise Lorraine Butler was present and represented herself. The Agency was represented by Assistant City Attorney Niels Loechell. Having considered the evidence and arguments of the parties, the Hearing Officer makes the following findings of fact, conclusions of law and enters the following decision:

I. STATEMENT OF THE CASE

Appellant Denise Lorraine Butler appeals her five-day suspension dated Sept 8, 2006 by the Denver Department of Human Services (DDHS). Appellant filed a timely appeal of the action on Sept. 22, 2006 pursuant to the jurisdiction provided in the Career Service Rules (CSR) § 19-10 A. 1.

The parties stipulated to the admissibility of Exhibits 1 - 6. No other exhibits were offered by either party.

II. ISSUES

The following issues are raised in this appeal:

1. Did the Agency prove by a preponderance of the evidence that Appellant's conduct justified discipline under the Career Service Rules, and

2. Was a five-day suspension within the range of discipline that could be imposed by a reasonable administrator?

III. FINDINGS OF FACT

Appellant Denise Lorraine Butler has been employed by the City and County of Denver for almost thirty years. She was promoted into the position of Contract Compliance Analyst for the Department of Human Services in April 2001. In that position, Appellant processes the contracts of Agency service providers, and handles the 1297 school readiness program, which requires that she manage the Agency's contracts with child care providers under Colorado House Bill 1297.

On Wednesday, Aug. 10, 2006, Appellant returned to work from a three-day disciplinary suspension. The previous day, Contract Compliance Supervisor Beverly Lucero emailed her a list of five assignments and deadlines from her inbox that had not been redistributed to other staff during her absence. Section Administrator Jim Allen added another assignment: delivery of a work plan on an audit investigation regarding 1297 contractor Denise Lyons by noon on Thursday. At 2:24 pm that Wednesday, Appellant emailed Mr. Allen and Ms. Lucero that she had completed the first four assignments on time. As to the fifth, Appellant stated, "I have emailed Susan Cooper for explanation [of the 1297 invoice issues]." Appellant also requested that the Lyons work plan be assigned to another employee, since "I personally know her and therefore feel this would be in the best interest of the City." Mr. Allen responded at 2:34 pm by requesting a copy of the email to Ms. Cooper, and instructing Appellant not to discuss the Lyons matter with her or anyone outside the department. At 3:20 pm, Appellant emailed the request for information to Ms. Cooper, and copied Mr. Allen and Ms. Lucero. [Exhs. 3, pp. 3 – 4, and Exh. 4.] Appellant admitted at hearing that she had not sent the email to Ms. Cooper at 2:24, the time of her statement to Mr. Allen that she had done so.

Shortly thereafter, Ms. Lucero and Mr. Allen met with Appellant to discuss her request to have the Lyons matter reassigned. Appellant informed them she has known Ms. Lyons as a family friend for twenty years, but that she hasn't seen her for a couple of years. Appellant also stated she knew persons involved in the Hope Center, another contractor for the Agency. Mr. Allen asked to see any Lyons and Hope Center invoices approved by Appellant. Appellant delivered two invoices, which were admitted in this proceeding as Exhibit 5. The first reimbursement request is for \$3,349.12 payable to Ms. Lyons, which Appellant re-authorized on May 26, 2006 after the original invoice had not been paid. The second is a \$12,000 invoice from the Hope Center Appellant authorized for payment on May 12, 2006.

On Aug. 16, 2006, Appellant was sent a letter advising her that discipline was being considered based upon 1) her failure to perform the Lyons assignment, 2) her erroneous statement that she had emailed Ms. Cooper as of 2:24 pm on Aug. 10th, and 3) her request for reassignment of a duty based on a belated claim of a personal

relationship with the vendor, after having authorized disbursement to that vendor without revealing that relationship. [Exh. 1.]

At the pre-disciplinary meeting, Appellant submitted a written statement in response to these allegations. The statement admitted the Lyons work plan was not done by the deadline because of the stress of her return to work. Appellant added that Ms. Lyons was a long-time acquaintance she has not seen since 1995, but that she informed Division Director Juanita Sanchez in 2005 that she knew two of the 1297 vendors personally. Appellant also wrote that she believed she had sent the email to Ms. Cooper at the time of her statement to Mr. Allen, but discovered her mistake after being questioned and sent the email immediately. [Exh. 6.]

As a part of his duties, Deputy Manager Kevin Patterson administers the Agency's Contract Unit to which Appellant is assigned. Mr. Patterson imposed the five-day suspension after considering the information provided at the pre-disciplinary meeting, Appellant's previous discipline for similar performance issues, and Appellant's work record with the city. Mr. Patterson found that Appellant failed to meet Mr. Allen's deadline to submit the Lyons work plan, requested reassignment of work for reasons leading him to believe she sought merely to avoid the work, and inaccurately represented to her manager that she sent an email when she did not do so. Mr. Patterson imposed the suspension because he believed it was proportionate to the seriousness of the misconduct and in keeping with the principles of progressive discipline. Appellant's previous discipline was all imposed over the past seven months, and consisted of a verbal reprimand, a written reprimand and a three-day suspension. Mr. Patterson viewed these incidents as a continuation of Appellant's problems in meeting deadlines and obtaining information needed for various reports critical to the Agency's funding cycle. However, Mr. Patterson did not conclude that Appellant had been dishonest in her statement related to the Cooper email.

Appellant testified that on Aug. 10th she found it hard to formulate her thoughts in response to the emailed assignments because of the pressure of the suspension and the number of assignments waiting for her that day. Appellant admitted she missed the deadline to produce the Lyons work plan because she had never done such a plan and therefore needed guidance from her supervisor, who was absent. Appellant also admitted she did not seek help from Mr. Allen about how to create the work plan.

As to her request for reassignment of the Lyons work plan, Appellant testified that she felt her relationship with Ms. Lyons would become an issue in doing that work. She did not disclose the relationship to her current supervisors before authorizing payments to either vendors she knew because she believed Ms. Sanchez had authorized her to approve their invoices in 2005. Approving invoices involves a review of receipts and assurance that the services were rendered, while creation of a work plan for an audit investigation of a vendor requires a determination about whether the vendor had met the obligations of the contract.

Regarding the Cooper email issue, Appellant testified she told Mr. Allen she was

going to send it, and that she did so an hour later. Appellant felt the suspension was too severe for these mistakes given the pressure of her return to work, and her long career with the city. Appellant also believes that simple communication between herself and her supervisor would have been a more appropriate manner of handling these admitted mistakes, and would have allowed her to reach the end of her long and successful city service in various responsible positions with a feeling that she was valued as an employee.

IV. ANALYSIS

1. Discipline under the Career Service Rules

In an appeal of a disciplinary action, the Agency has the burden to prove the action was taken in conformity with Rule 16 of the Career Service Rules, and that the degree of discipline was reasonably related to the seriousness of the offense, taking into consideration the employee's past record. CSR § 16-20.

A. CSR § 16-60 A. Neglect of duty

The Agency asserts that Appellant neglected her duty to monitor certain contracts by her inadequate responses to two assignments communicated on Aug. 10, 2006, and her attempt to avoid one of those two assignments by claiming a personal relationship with the vendor.

It is undisputed that Appellant's chief duties were to handle all aspects of the contracting process for her assigned contracts, and manage the 1297 school readiness program. When Appellant returned from her suspension, she had six assignments that needed immediate attention. Appellant accomplished four of them by 2:24 pm without need of further intervention by her supervisors. The fifth assignment, 1297 invoice issues, required that Appellant seek information from Ms. Cooper. Appellant told Mr. Allen at 2:24 pm she had already done so, which was not correct. In Appellant's pre-disciplinary statement, she stated she believed when she said it that she had sent it out. Appellant added that she sent it out "immediately" once she realized she had not done so. [Exh. 6.] In fact, Appellant waited an hour after Mr. Allen's message to send the message to Ms. Cooper and copy the supervisors. In contrast to that statement, Appellant testified that her email said she was going to get it out, not that she already had. Appellant stipulated to the email submitted into evidence, which shows that Appellant told her supervisors "I have emailed Susan Cooper for explanation." [Exh. 3, p. 4.] Appellant sent the message under stress, with the intent to send the message as soon as she could and to reassure her supervisors that she was handling all of the tasks. Once she discovered she had forgotten to send the email, Appellant never corrected the false impression she had created. As a result, her supervisors were left to conclude that Appellant had been dishonest. I find that Appellant neglected her duty to accomplish this assignment in a conscientious manner when she affirmatively stated it was done, knowing it was not yet done.

As to the sixth task, the Lyons work plan, Appellant's statements and testimony indicate that her first reaction was that she never created a work plan for an audit investigation before, and was uncertain how to proceed. Appellant admitted missing the deadline. However, Appellant's emailed reply did not mention her need for information to complete the task, but instead asked that the matter be reassigned because she knew the vendor. In her pre-disciplinary statement, Appellant detailed that relationship, which was that of an acquaintance she had not seen in ten years. As described, this is not a "close personal acquaintance" that would prevent Appellant from making decisions on Ms. Lyons' contract, as described in § 1.3 of the Fraud Prevention/Quality Improvement Manual. [Exh. 2, p. 2.] Appellant was not disciplined for authorizing payment to Ms. Lyons in May 2006, but rather for attempting to avoid work by claiming a relationship that would create a conflict of interest. Mr. Patterson based this conclusion partly on the fact that Appellant recently authorized payment on the contract without disclosing the relationship. Due to the similarity in the work of disbursement decisions and creation of a work plan, I find this conclusion is reasonable. Based on the foregoing findings, it is determined that Appellant's request for reassignment of the work was neglect of her duty to manage the 1297 contract.

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

An employee acts carelessly when she is heedless of an important work duty, resulting in potential or actual significant harm. A person exercises reasonable care when she acts with that degree of care which reasonable persons use under similar circumstances. In re Gagliano, CSA 76-06, 4 (1/2/07).

Appellant's replies to her supervisors were rushed, inaccurate, and the product of a stressful day. Appellant's testimony and history as a long-term and valuable employee indicate that she would have given different replies if she had not been under the pressure of deadlines created by her suspension. Appellant was careless when she told her supervisor she had taken action on the strength of her intent to do it in the future, and then forgetting to do it until she was asked for a copy of the email. Appellant also asked for reassignment of the work plan based upon a past acquaintanceship that had not prevented her from approving payments to that same vendor, and failing to ask for help to create the work plan. Appellant was thus careless in the performance of her duties, resulting in missed deadlines and delay in completion of both important tasks, with potential adverse effect on the Agency's funding cycle.

C. CSR § 16-60 E. Any act of dishonesty

Mr. Patterson determined that Appellant had not been dishonest by means of the three items for which she was disciplined, and the evidence here supports that determination.

D. CSR § 16-60 L. Failure to observe written departmental or agency regulations

Mr. Patterson found that Appellant sought to avoid preparing the work plan by citing a personal relationship with the vendor, but he concluded that her concern was inconsistent with Appellant's May 2006 approval of payments for that vendor. Based on Appellant's description of this relationship, I find that neither the fraud prevention policy nor the employee handbook prohibited Appellant from making decisions as to Ms. Lyons, including disbursements on the contract and creation of a work plan for an audit investigation. However, an employee does not violate either of these policies by disclosing a close relationship or potential conflict of interest, but by failing to disclose such facts. Therefore, the agency did not prove that Appellant violated CSR § 16-60 L. by means of the policies cited in the disciplinary letter.

E. CSR § 16-60 O. Failure to maintain satisfactory working relationships

The Agency presented no evidence in support of this allegation, and I find that it has not been proven.

F. CSR § 16-60 Z. Conduct prejudicial to the Agency

The only evidence in support of this allegation was the testimony of Ms. Lucero, who stated she believed Appellant violated this rule because her emailed statement was untrue, and the Agency would have been perceived negatively if Appellant had given favorable treatment to a personal friend.

This rule requires proof of conduct that negatively impacts "the good order and effectiveness" of an agency, or that "compromises the integrity of the City". CSR § 16-60 Z. The Agency failed to show that Appellant's emailed statement to her supervisor or her request to be reassigned from a task involving an acquaintance became publicly known, or that either adversely affected the Agency or City in any respect. Therefore, it is determined that Appellant did not violate this rule.

2. Appropriateness of Penalty

The final issue is whether the five-day suspension was within the range of penalties that could be imposed by a reasonable administrator. Mr. Patterson considered that the proven acts of negligence and carelessness were similar to recent actions which led to a verbal reprimand, written reprimand and a three-day suspension. He determined that a pattern of performance problems was emerging. Mr. Patterson found however that Appellant is a long-term and valuable employee who could benefit from a small increase in the level of discipline last imposed. Therefore, he decided that a five-day suspension would adequately address the issue. The Agency stated that Appellant's performance of her duties since the discipline has shown steady improvement.

I find that a five-day suspension was gauged to highlight the need for

improvement in Appellant's performance; specifically, attention to deadlines and the timely submission of information needed for budget reports. Mr. Patterson credibly testified that he believes that discipline can be positive if it is carefully tailored to the level of misconduct it is designed to address. Appellant's improved performance after the discipline indicates that the penalty achieved that purpose, in keeping with the policy of CSR § 16-20.

ORDER

Based on the foregoing findings of fact, the Agency's suspension dated Sept. 8, 2006 is AFFIRMED.

Done this 5th day of January, 2007.


Valerie McNaughton
Career Service Hearing Officer

NOTICE OF RIGHT TO FILE PETITION FOR REVIEW

A party may petition the Career Service Board for review of this decision in accordance with the requirements of CSR § 19-60 *et seq.* within fifteen calendar days after the date of mailing of the Hearing Officer's decision, as stated in the certificate of mailing below. The Career Service Rules are available at [www.denvergov.org/csa/career service rules](http://www.denvergov.org/csa/career%20service%20rules).

All petitions for review must be filed by mail, hand delivery, or fax as follows:

BY MAIL:

Career Service Board
c/o Career Service Hearing Office
201 W. Colfax Avenue, Dept. 412
Denver CO 80202

BY PERSONAL DELIVERY:

Career Service Board
c/o Career Service Hearing Office
201 W. Colfax Avenue, First Floor
Denver CO 80202

BY FAX:

(720) 913-5995

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