

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

Appeal No. 72-06

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**DECISION - ERRATA (Correcting Appeal Number only)**

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IN THE MATTER OF THE APPEAL OF:

**CATHRYN DIAZ,**  
Appellant,

vs.

**DENVER ZOOLOGICAL FOUNDATION, DEPARTMENT OF PARKS AND RECREATION,** and the City and County of Denver, a municipal corporation, Agency.

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The hearing in this appeal was commenced on Dec. 6, 2006 and completed on Dec. 8, 2006 before Hearing Officer Valerie McNaughton. Appellant was present and represented by Mark Bove, Esq. The Agency was represented by Assistant City Attorney Robert A. Wolf. Administrative Support Supervisor Carole Flohr served as the Agency's advisory witness. Having considered the evidence and arguments of the parties, the following findings of fact and conclusions of law are entered herein.

**I. INTRODUCTION**

Appellant Cathryn Diaz is an Administrative Support Assistant II (ASA II) for the Department of Parks and Recreation (Agency) who is assigned to the Denver Zoo's Operations Department. Appellant appeals her dismissal dated Aug. 29, 2006. Agency's Exhibits 1 – 2, 4 – 18, 20 – 24, 28 – 31, and 33 were admitted into evidence. Appellant's Exhibits A – G, I – J, and N – O were also admitted, the latter for the sole purpose of showing that Appellant received the documents.

**II. ISSUES**

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

2. Was dismissal within the range of discipline that could be imposed by a reasonable administrator?

### III. FINDINGS OF FACT

The Agency terminated Appellant based upon a performance incident which occurred on June 23, 2006 and continued unsatisfactory performance. [Exh. 1.] Appellant asserts that the termination violated the Career Service Rules.

Before her termination, Appellant served as clerical support for Operations Supervisor Carol Flohr at the Denver Zoo Operations Department, the two-person unit that performs general administrative duties for the zoo. Appellant's job responsibilities were to handle general clerical duties, mail, petty cash, credit cards, radios and paychecks for zoo employees and departments.

Appellant's work procedure required her to log in all packages with the time, vendor, and recipient, and notify the recipient within ten minutes of receipt. [Exhs. 6, 7.] In 2004 and 2005, Ms. Flohr often reminded Appellant of her job duties and the steps needed to accomplish them, including the handling of packages. [Exhs. 6, 8, 9, 33.] Appellant was suspended for two weeks in August 2005 for performance problems related to her package delivery responsibilities. [Exh. 23.]

At 8:30 a.m. on Friday, June 23, 2006, Administrative Support Supervisor Carole Flohr informed Appellant that Area Supervisor Charlie Radcliffe from Tropical Discovery was expecting a FedEx package containing snakes, and that he would like to be notified as soon as it arrives. Mr. Radcliffe came down at lunchtime that day to find out if the package had been delivered. Ms. Flohr checked with Appellant a few times during the day to see if it had arrived. At 2:20 pm, Ms. Flohr saw a box on Appellant's desk addressed to Zoo Curator Rick Haeffner, and asked Appellant to call Mr. Radcliffe to see if that could be his box. Mr. Haeffner is Mr. Radcliffe's supervisor in Tropical Discovery. Appellant did so, and Mr. Radcliffe confirmed that the box was indeed the green snake from South America that he had been expecting. Mr. Radcliffe picked it up an hour later.

Appellant received the package from FedEx at 1:25 pm, and logged it in as "1 box" for Rick Haeffner in the "Animal" Department. [Exh. C-8.] Appellant testified that she called Mr. Haeffner as soon as it arrived. Appellant also stated she did not think it was the anticipated box because it was not marked "live animal". Appellant was aware that the zoo did not use FedEx's recommended procedures in marking shipments containing live animals. The one-hour delay in identifying the package did not cause harm to the reptile.

Mr. Haeffner has worked a Sunday through Thursday schedule for the past thirteen years, and was therefore not at work to receive phone calls on Friday June 23<sup>rd</sup>. Mr. Haeffner checked his messages on Sunday when he returned to work, and found no message from Appellant about the arrival of the package. The tropical snake could have suffered from lack of sufficient water and warmth if it was not cared for until

Mr. Haeffner returned to work two days after arrival of the package. [Testimony of Mr. Haeffner.]

On Aug. 4, 2006, Appellant's performance for the period of April 1<sup>st</sup> to July 14, 2006 was rated as "successful" in four areas (service, teamwork, respect for others, safety) and "needs improvement" in accountability and in her performance of all five of her job duties. [Exh. 20.] In 2005, Appellant's work load was significantly reduced by elimination of daily work orders and keeper reports. Nonetheless, Appellant processed only 53% of the credit card distributions and 21% of the petty cash vouchers. [Exhs. 10, 11.] Appellant responded that many employees chose to go to Ms. Flohr for those services, and Ms. Flohr did not redirect them to her. [Exh. E.] Employees and visitors must pass Appellant's desk in order to reach Ms. Flohr's office. Appellant admitted that there were errors in three data entry assignments. [Exhs. 12, 13 and G.] One of the assignments still contained visually obvious and critical mistakes after three drafts were reviewed by Ms. Flohr and returned to Appellant for corrections. [Exh. G.] Appellant also admitted she made mistakes on three occasions in processing radios for repair. Some of those mistakes took lengthy questioning from Ms. Flohr to correct, and Appellant's answers contained unrelated comments. [Exh. 14.] Finally, Appellant did not complete two FedEx shipments correctly during the evaluation period. [Exhs. 8, 9.]

The pre-disciplinary letter notes that over the course of the past four years Appellant had eight prior disciplinary actions, including three suspensions for work performance problems. [Exh. 1-4.] Appellant's job classification describes her duties as routine, repetitive, with well-established procedures, specified tools, and clear instructions. The essential duties include reviewing and verifying the completeness of documents, compiling and editing databases, distributing mail, and maintaining records. Qualifications needed are responsibility, flexibility, proof-reading, and interpersonal skills. [Exh. 4.]

At the pre-disciplinary meeting, Appellant submitted her written statement that said she complied with the package procedure, and the package did not appear to be the one she had been told to look for. Appellant admitted mistakes in other FedEx shipments, and said she had not been informed of the other mistakes, or that she followed the instructions she was given. Appellant also stated Ms. Flohr often performed Appellant's petty cash, credit card or radio tasks because employees chose to bypass her. [Exh. E.] Ms. Flohr concluded that Appellant's refusal to admit these problems demonstrated she did not intend to improve her performance, and the pattern of errors seriously impacting unit efficiency would continue if a penalty less than termination was imposed. Appellant was terminated on Aug. 29, 2006.

At hearing, Appellant admitted she did not recognize the snake package or call Mr. Radcliffe for an hour after its arrival, but explained that it was not labeled as an animal or addressed to Mr. Radcliffe. Appellant said she called Mr. Haeffner to report the receipt of the package, and knew he was out until Sunday. During Appellant's suspensions, employees got used to going to Ms. Flohr for petty cash, credit cards and radios. Appellant explained that the errors in her projects were minor, the result of

typing too fast, not proofreading, or being distracted by other work. Appellant also said that most were discovered by Ms. Flohr before they went out and then corrected. Mistakes in handling packages were caused by the unanticipated early arrival of the messenger, or were corrected by FedEx. [Exhs. 8 and F.] Appellant believed she followed instructions in preparing the spreadsheet and did not see any errors. [Exh. 13.] Appellant admitted the errors shown by Exhibits 12, 14, G and K.

Appellant testified she stopped being proactive about two years ago after Ms. Flohr was critical of her efforts, and thereafter did only what she was instructed to do. Appellant believes her work does not need to be improved, and testified she was not sure a suspension would cause her to achieve the performance desired by her supervisor.

In support of her claim that the discipline was unfair, Appellant testified that Ms. Flohr told her and former employee Mike Hernandez that this would be "a bad time to be out of work." She believes she was disciplined because her wages as a Career Service employee are higher than employees not covered by the system. Appellant also stated that Ms. Flohr started "nitpicking" Mr. Hernandez after she became a supervisor, then began to do the same thing to her. Appellant felt Ms. Flohr took the interesting jobs (radios, excel spreadsheets, accounts payable) away from her and left her with those tasks she didn't do as well. Appellant also said she was given special projects during this time because she lacked sufficient work to keep her busy. Appellant believes Ms. Flohr made substantial errors in her own work, including failing to obtain keys from separating employees. [Exh. N.] Appellant submitted five letters from people who worked with her stating that she was helpful to them. [Exh. O.]

ASA Eva Santovena testified that the day after she gave testimony at Appellant's most recent Career Service appeal, she was informed that she would no longer be asked to pick up packages from Appellant, and that messages about incoming packages would now be sent over the radio. Ms. Santovena stated that it is better for her to be relieved of this duty, even though picking up packages from Operations was not a lot of trouble.

Jose Trujillo, former Superintendent of Facilities for the Zoological Foundation, testified that Appellant complained that Ms. Flohr micromanaged her in 2003. He advised her to try to cooperate, but to document any unfair treatment. Mr. Trujillo was Appellant's supervisor in 2000, and rated her performance as exceeding expectations at that time.

Mike Hernandez testified by phone that he was a co-worker of Appellant and Ms. Flohr for a few years, then worked under Ms. Flohr's supervision along with Appellant after Ms. Flohr's promotion. He observed that when Ms. Flohr's instructions were ambiguous or contradictory, Appellant would falter in her performance. Mr. Hernandez believed Ms. Flohr was jealous of his good reputation at the zoo, and that she created her own job by taking over his duties.

HVAC worker Gene Roybal and FedEx carrier Domingo Lopez testified that Appellant was helpful and courteous in their interactions with them. Mr. Lopez did not recall whether the package he delivered on June 23, 2006 was marked "live animal". Former employee Jennifer Monk testified that Appellant trained her to perform package and mail duties, and did a good job. Appellant told her to call the recipient as soon as the package arrived, and to contact them again or have a coworker deliver it if they did not pick it up.

#### IV. ANALYSIS

##### I. Career Service Rules

In this de novo hearing on the appropriateness of the termination, the Agency bears the burden to prove by a preponderance of evidence that Appellant violated the disciplinary rules as alleged, and that the termination was within the range of discipline that can be imposed under the circumstances. Turner v. Rossmiller, 535 P.2d 751 (Colo. App. 1975.); In re Gustern, CSA 128-02, 20 (12/23/02).

##### A. CSR § 16-60 A: Neglect of duty

The Agency claims Appellant was negligent in failing to deduce that the package delivered on June 23<sup>rd</sup> contained the reptile expected by Mr. Radcliffe. Appellant admits that her duties included the receipt of packages for the zoo departments, but explains her failure to immediately notify Mr. Radcliffe because the package was not addressed to Mr. Haeffner and not labeled as an animal, and so there was no reason for her to conclude that it was the snake anticipated by Tropical Discovery.

Early that morning, Appellant was instructed to watch for a package containing tropical snakes, and was reminded of the importance of that package several times by Ms. Flohr and Mr. Radcliffe's visits and requests about the package. The package arrived at 1:25 p.m., and Appellant did not notify Mr. Radcliffe of its arrival until Ms. Flohr asked her to call him at 2:20 p.m.

Appellant's job requires adaptability, attention to detail, and the ability to check information for accuracy. Appellant's stated reliance on a rigid interpretation of her job, and her technical compliance with certain defined office procedures, do not comply with her duty to assist in package delivery. Under the circumstances, Appellant's failure to call Mr. Radcliffe to determine if the only package delivered that day to the Animal Department may be the snake was neglect of her duty, especially given the harm that could have been caused by a two-day delay in caring for the reptile. [Exhs. 7 and C.]

The Agency also claims that Appellant was negligent in the performance of her duties to process petty cash vouchers, credit card distributions and the movement of radios during the three-month period covered by her third consecutive "needs improvement" PEPR/STARS evaluation. Appellant does not contest that she

processed 21% of petty cash requests, 53% of the credit cards, and 51% of the radio distributions. Appellant failed to take any action to perform those duties in place of supervisor, despite Ms. Flohr's previous reminders of these duties, and a notable disparity in their workloads which favored Appellant. Appellant had the opportunity to correct this pattern when employees walked by her desk on their way to see Ms. Flohr.

Appellant's duties were well defined and often reinforced by instructions, reminders and corrections from her supervisor. I conclude from Appellant's demeanor and testimony that she preferred certain of her duties, and did not give adequate attention or care to other duties that she disliked. Appellant admitted that she became distracted from her clerical duties when other employees approached, despite the need to multi-task in this position. I conclude that Appellant neglected her duties by allowing her supervisor to perform them on a regular basis, and by failing to devote the attention that was required to her clerical and other duties in order to assure they were done in a reasonably accurate and timely manner.

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

The Agency claims that Appellant was also careless in the performance of her duties by 1) failing to promptly notify Mr. Radcliffe of the delivery of the snake, and 2) inaccurately performing her clerical, monitoring and delivery duties from April to July, 2006, as indicated in the Aug. 4<sup>th</sup> PEPR/STARS evaluation.

A person is careless in the performance of her duties when she is heedless of an important work duty, resulting in potential or actual significant harm. The care required by any situation is measured by that degree of care a reasonable person would use under similar circumstances. In re Gagliano, 76-06, 4 (1/2/07). A reasonable person in Appellant's position on June 23<sup>rd</sup> would have made some effort to determine if the only package delivered that day addressed to the Animal Department was the anticipated tropical snake, given the potential injury to the snake of a delay in placing it in the proper conditions. Appellant was responsible for its delivery, and yet she left a message only for the named recipient, who she knew would not receive that message for another two days. In fact, the message was not recorded on Mr. Haeffner's voice mail. I conclude that Appellant intended to reach Mr. Haeffner, but that she dialed the wrong number.

Ms. Flohr had the same information about the package as that possessed by Appellant, but she concluded that it was worth an effort to confirm whether it was the snake. After Ms. Flohr urged Appellant to call Mr. Radcliffe about the package, Appellant was able to get confirmation that the package indeed contained the reptile. Appellant's failure to take that action independently was negligent given the risk of potential harm to the animal.

Secondly, the Agency relies on Appellant's failure to proofread and correct her work and to ensure complete and accurate information on outgoing packages. Proofreading is part of the care needed to accomplish Appellant's duties as the clerical

assistant to the Operations Department. Appellant admits the mistakes shown in Exhibits 12, 13 and G, but states that some of those mistakes were caused by her need to do other tasks at the same time, and others were minor or corrected by Ms. Flohr. The evidence shows that Appellant needed frequent reminders to perform routine parts of her duties. [Exhs. 8, 9, 14, 20-8.]

A reasonably careful person in Appellant's position would attend to her clerical duties in order to ensure they were performed with accuracy. The evidence showed that Appellant's work on special projects sometimes contained obvious errors even after numerous previous drafts were corrected by her supervisor. The admitted errors were both substantive, showing inaccurate budget codes and VIN numbers, and in appearance. [Exhs. 12, 13, G, and K.] Multiple errors in one spreadsheet were reported to Ms. Flohr by the Chief Financial Officer, causing inconvenience and embarrassment to the Operations Department. Ms. Flohr was required to proofread Appellant's work before it went out in order to avoid similar situations. Appellant's errors and omissions displayed carelessness in the performance of her duties, despite her receipt of numerous reminders and opportunities to improve.

C. CSR § 16-60 J.: Failing to comply with orders of supervisor or failing to do assigned work which the employee is capable of performing

The Agency's evidence is directed to the second part of the rule; specifically, that Appellant failed to handle petty cash requests, credit card distributions, and radio movements, despite the fact that those tasks were her priority assignments. Appellant admits that many employees chose to go to Ms. Flohr to obtain these services, but argues that Ms. Flohr failed to direct them back to her. Ms. Flohr responded that good customer service means doing the work requested as soon as it is asked, without delaying employees by referring them back to Appellant.

Violation of this rule requires evidence that a supervisor assigned work to Appellant, and that she failed to perform that work. The Agency established that Appellant neglected the above duties, as indicated in Section A. of this decision. For this reason, the Agency proved that Appellant failed to do the assigned work in violation of this rule.

D. CSR § 16-60 K.: Failure to meet established standards of performance

This rule requires proof that qualitative or quantitative standards of performance were made known to an employee, and that the employee failed to meet them.

The Agency maintains that Ms. Flohr's May 4, 2005 directive established the standards of performance applicable to incoming and outgoing packages. [Exh. 6-1.] Appellant does not dispute that she received the directive, and that it established the standards by which she was to perform those duties. Appellant proved that she performed two of the three tasks listed in the directive by logging the item on the spreadsheet, and notifying the listed recipient within ten minutes, albeit ineffectively.

There was no evidence as to whether Appellant performed the third and last instruction in the directive, which was to write the name of the department and person receiving the package on the package, and the Agency does not raise that issue in this discipline. Appellant argues that she did not violate the directive when she failed to look beyond the name listed on the package and assume it was the awaited snake. Since the directive does not mandate that Appellant inquire into the accuracy of any information on the package, Appellant did not violate the directive by failing to question the actual recipient.

As to outgoing packages, Appellant admitted that on May 2, 2007 she sent a FedEx package with an air bill that lacked the pickup date, sender's name and budget code, but explained that she was assisting someone while completing the task. [Exh. 8.] Appellant also admitted that on May 16<sup>th</sup> she called for a FedEx pickup before the package was ready, which compelled the carrier to wait, and that she neglected to include the date, type of service, and budget code on the air bill. [Exh. 9.] The directive requires Appellant to make sure that all outgoing FedEx packages have a completed form and budget code, and call for pickup after the package and form are ready. Appellant failed to follow the directive in both of the above instances.

In addition, the disciplinary letter cites Appellant's receipt of her third consecutive needs improvement PEPR/STARS evaluation, covering a nine-month period of substandard work. Exhibit 20 documents Appellant's inadequacies in performing general office duties, special projects, and package deliveries. Appellant admits some of the mistakes identified in the evaluation, and explains others by citing distraction by other tasks, co-workers' choices, changing procedures and following instructions. Appellant testified that some of her favorite work was taken away by her supervisor, and she did not enjoy the tasks that remained in her job after her work load decreased. That fails to explain her continued performance issues in the same areas after those issues were documented in two previous detailed evaluations. [Exhs. 15, 17.] Appellant has failed to meet clear and established performance standards in violation of CSR § 16-60 K.

#### V. Penalty

Appellant contends that the termination is too harsh in light of the nature of the performance issues cited in the disciplinary letter, and that her supervisor's management style caused many of the problems. The Agency counters that, given extensive previous discipline and reinforcement given for similar mistakes, the penalty of termination is in keeping with progressive discipline, and is necessary based upon Appellant's refusal to acknowledge the problems and take advantage of opportunities to improve her performance.

The Career Service Rules require progressive discipline to correct inappropriate behavior or performance. Discipline must be reasonably related to the seriousness of the offense, and appropriate to correct the situation and achieve the desired change in behavior or performance. CSR § 16-10.




During the two years preceding this action, Appellant has been issued seven disciplinary penalties ranging from verbal warnings to a four-week suspension for similar performance inadequacies and other violations of work rules. The record is filled with the reminders of her supervisor and examples of performance mistakes. Appellant's job classification requires Appellant to perform her duties competently, even if multi-tasking is required, and to exercise care and attention when performing each task. Appellant's testimony demonstrated that she does not believe her performance needs improvement, and that she is unsure another suspension would cause her to improve.

Given the extensive discipline already meted out for almost identical violations, and the unlikelihood that a lesser penalty would correct the inappropriate performance, I find that termination was within the range of discipline that could be imposed by a reasonable administrator.

### ORDER

Based on the foregoing findings of fact and conclusions of law, the Hearing Officer AFFIRMS the Agency action dated August 29, 2006.

Done this 19<sup>th</sup> 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 OR PERSONAL DELIVERY:

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

#### BY FAX:

(720) 913-5720

*Fax transmissions of more than ten pages will not be accepted.*