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

Appeal No. 64-03

FINDINGS AND ORDER

IN THE MATTER OF THE APPEAL OF:

DONNIE DOLLISON, Appellant,

Agency: DENVER HEALTH AND HOSPITAL AUTHORITY.

Hearing Officer Joanna Lee Kaye held a hearing in this matter on July 17, 2003 in the Career Service Hearings Office. Christopher P. Friedman, Esq. represented the Denver Health and Hospital Authority (DHHA or Agency). Community Health Services Manager Rebecca Sue Hamblin served as advisory witness for the Agency. Donnie Dollison (Appellant) was present and was represented by Michael O'Malley, Esq. The parties both filed written closing statements at the hearing officer's request on or before July 30, 2003. The Agency filed a Response to Appellant's Closing Argument on August 5, 2003.

MATTER APPEALED

Appellant, formerly a career-status Custodian for Denver Health and Hospital Authority, challenges the Agency's decision to terminate him from his position for a number of alleged CSR rules violations.

For the reasons set forth below, the Agency's action is AFFIRMED.

ISSUES

1. Whether the Agency has shown by a preponderance of the evidence that Appellant engaged in the actions alleged.

2. If so, whether the actions shown constitute cause to discipline Appellant.

3. Whether Appellant's dismissal is reasonably related to the seriousness of the offenses in question, taking into consideration Appellant's past record.

FINDINGS OF FACT

Based on the evidence presented at the hearing, the hearing officer finds the following to be fact:

1. Appellant was a Custodian for the City and County of Denver for twenty years. He had been a custodian at the Lowry facility of the DHHA for 13 years at the time of his dismissal.

2. The Lowry facility is a 40,000 square foot building divided into main sections, including the health clinic and the poison center. At all times relevant to this appeal, Appellant was solely responsible for cleaning the health clinic, and Custodian Londell Hooks (Hooks) was responsible for cleaning the poison center.

3. At all times relevant to this appeal, Appellant worked the evening shift from 4:00 p.m. until 12:30 a.m. Appellant was to take one 30-minute lunch break and two fifteen-minute rest breaks during his shift. These breaks could not be consolidated into an hour break unless an employee consulted with his supervisor for approval first. Other than these breaks, Appellant was expected to be at the Lowry facility during his scheduled hours.

4. At all times relevant to this appeal, Custodial Supervisor Lavern McQueary (McQueary) was Appellant's immediate supervisor. McQueary supervised Appellant for a total of six years. McQueary and Appellant considered themselves friends, their friendship being predominantly a workplace relationship. Three to four times per week, he visited the Lowry facility to oversee the work of his employees there.

5. Doctors and nurses at the health clinic where Appellant cleaned frequently worked overtime into the evening hours, during which Appellant was scheduled to work. Such overtime work is typical and expected of professional staff at the health clinic.

6. Rebecca Sue Hamblin (Hamblin) is the Community Health Environmental Services Department Manager. She is McQueary's direct supervisor. During the months of January through April of 2003, Hamblin received complaints from staff at the health clinic in the Lowry facility that Appellant was uncommunicative and difficult to approach. She also received complaints from Appellant about staff working late and getting in his way. Each time Appellant made this complaint, Hamblin told him that he was to work around staff working late and return to those areas later during his shift.

7. During the months of January through April of 2003, McQueary received multiple complaints from health clinic employees who worked after hours. These complaints primarily surrounded tension with Appellant over their working late.
8. During the months of January through April of 2003, Appellant complained on multiple occasions to McQueary about employees working late at the health clinic.

9. Whenever McQueary received these complaints, McQueary told Appellant that the employees were the customers, and that Appellant needed to skip offices and other areas that were occupied and return to clean those areas toward the end of his shift. Appellant repeatedly responded that he could not work that way. Despite McQueary's repeated instructions, he continued to receive such complaints from both Appellant and other health clinic employees.

10. On multiple occasions from January to April of 2003, McQueary received complaints from employees that areas of the health clinic were not cleaned. As a result of these complaints, McQueary responded to the facility on several occasions, and found areas of the health clinic had not been cleaned the night before. These occasions were after McQueary had told Appellant many times that he had to double back to areas where staff worked late. McQueary either made arrangements to clean these areas, or cleaned them himself.

11. Richard Kornfeld, M.D. (Kornfeld) was the Medical Director for DHHA in the health clinic at all times relevant to this appeal. He regularly exceeded his scheduled work hours and worked after hours into the evening. He knows Appellant as a fellow employee in the health clinic because of the times he worked late during hours when Appellant was cleaning.

12. From April of 2002 through to the time of Appellant's dismissal, Kornfeld observed Appellant's general demeanor change. Appellant seemed angry for reasons unknown to Kornfeld, and it became more difficult to work and talk with Appellant. This demeanor change was conspicuous enough that Kornfeld tried on several occasions to talk to Appellant about his anger. Appellant refused to talk to Kornfeld about it. It eventually became "next to impossible" for Kornfeld to talk to Appellant.

13. Kornfeld called Appellant's supervisors on several occasions to report areas not cleaned by Appellant, trash not emptied in offices where employees worked late, and difficulties in communicating with Appellant.

14. Kornfeld told Appellant on more occasions than one that people had to work late in the clinic. Appellant repeatedly responded to Kornfeld that he couldn't always cover those areas where staff were working when this happened.

15. Kornfeld called Hamblin on March 11, 2003 to report that Appellant told Kornfeld he was to skip an area if somebody was working in the area.

16. The federal government periodically conducts inspections of facilities such as the Lowry facility. Passing these inspections is very important because grant determinations depend on compliance with federal guidelines, as determined during the inspections.

17. During the course of Appellant's employment at DHHA, the hospital management periodically held mock inspections to assure its facilities were in compliance with federal guidelines.

18. In March of 2003, Lowry facility management planned and held a mock inspection. Hamblin directed McQueary thirty days in advance to inform his employees to prepare for a mock inspection. Hamblin further reminded McQueary of the mock inspection on March 10, the day before the inspection was to take place. Hamblin specifically requested that the building foyer be thoroughly cleaned, baseboards wiped, walls spot-cleaned, steel polished, water fountains detailed, outside of the porcelain bowls be polished, and everything in the housekeeping closet be picked up off the floor.

19. McQueary told Appellant in advance about the mock inspection that was to take place on March 11, 2003. He gave Appellant specific instructions concerning the mock inspection for which Appellant was responsible during his shift on the night of March 10, 2003. McQueary recalls telling Appellant to move everything off the supply room floor, clean his cart, mop the floor, make sure nothing was within 12 inches from the ceiling, and to clean all stainless steel sinks and fountains.

20. When Hamblin came into the Lowry facility to execute the mock inspection on March 11, 2003 she found that none of the specific items she requested were done. She reported her displeasure over this event to McQueary.

21. On the evening of March 13, 2003 McQueary came into Hamblin's office and told her Appellant was calling "about every eight minutes" to complain about staff working late at the health clinic. McQueary received a call from Appellant while he was still in Hamblin's office. Hamblin overheard McQueary's end of the conversation which concerned people working late. Hamblin heard McQueary tell Appellant to skip the person who was in his way and return to that area at the end of his shift.

22. At around 7:00 p.m. on March 13, 2003 McQueary received another phone call from Appellant. Appellant told McQueary he could not get his work done because there were staff in the building.

23. McQueary was out making his rounds to the facilities he supervised at the time of this call. He responded to the Lowry facility at 9:07 p.m. (Exhibit 3, p. 3). When he got there he looked around and found no one there. Appellant was not there either.

24. Londell Hooks, the custodian for the poison control center, was at the Lowry facility. McQueary spoke briefly with Hooks at 9:30 p.m., right at the end of Hooks' lunch break. McQueary asked Hooks if he had seen Appellant and Hooks told him he did not know where Appellant was.

25. McQueary waited for Appellant to return. At 10:17 p.m. Appellant still had not returned to the health clinic (Exhibit 3, p. 3). McQueary left at that time.

26. Hooks saw Appellant at 12:30 a.m. on the morning of March 14, at the end of their shift. Hooks does not know where Appellant was that night or what time he came back.

27. Appellant did not ask McQueary or Hamblin to adjust his work schedule, consolidate his breaks, or otherwise take time off during the evening of March 13, 2003.

28. The next time McQueary heard from Appellant was in a voicemail message left on McQueary's personal cell telephone at 8:14 a.m. the next morning, March 14, 2003. The message Appellant left is as follows (*see,* Exhibit 4):

    Yes Vern. This is Donnie. Man it was nice of you to go back and tell Lundell (*sic*) all them lies that you told him. The next time, bro, you wanna tell something about me, man, be man enough to come to my damn face. You ain't got to wait 'til you get to the job to try to get somebody jumped. You come do it yourself homie. And all that lyin' and shit you doin', man you need to bag the hell up off of it because I'm not going for it, okay? Now I don't know what the hell that "job" told you, man, but I'm not the one. And thank you. You can get back with me if you want to my brother.

29. At hearing, Appellant explained this telephone message as follows. Appellant recalls Hooks confronting him on the night of March 13, 2003. Appellant recalls that Hooks said, when McQueary was at the Lowry earlier in the evening, McQueary told Hooks that Appellant had reported seeing Hooks in the parking lot taking drugs.

30. The hearing officer finds that the confrontation Appellant recalls between Hooks and himself did not occur. The hearing officer finds Appellant believes this confrontation took place, and further finds that Appellant was extremely upset by the alleged confrontation as he recalled it occurring.

31. Because Appellant believes that the confrontation between Hooks and himself took place, Appellant further believes that Hooks was angry with him, and feared for his own safety. Appellant left the telephone message on McQueary's answering service in response to that fear, not with the intent to threaten or intimidate anyone. These findings are corroborated by the voicemail message Appellant left for McQueary the following morning.

32. McQueary was not aware of the any confrontation between Appellant and Hooks. He was not sure what any part of the message meant. Appellant did not tell anyone about the alleged conversation with Hooks at the subsequent pre-disciplinary meeting, or any time prior to the hearing in this case.

33. McQueary taped a copy of the message the morning he received it. He brought the tape to Hamblin because he felt threatened by the message (Exhibit 9). Hamblin listened to the message and also found it made little sense. She agreed that the

message was threatening. She told McQueary to call 911 if he had any problems with Appellant.

34. The Agency prepared a Contemplation of Disciplinary Action letter, which McQueary and Hamblin hand-delivered to Appellant on April 2, 2003 (Exhibit 3).

35. A Predisciplinary Meeting occurred on April 16. 2003. Present were Appellant, McQueary and Hamblin. When asked repeatedly if he wanted to make a statement, Appellant stated he "had nothing to say" but expressed his intent to appeal any action the Agency might take.

36. Hamblin was the primary decision maker concerning Appellant's discipline. She considered all the issues identified in the Contemplation Letter prepared by McQueary (Exhibit 3). Those issues are as follows in this order: Appellant's failure to comply with special instructions to prepare for the mock inspection on March 10, 2003; Kornfeld's March 11, 2003 telephone complaint that Appellant had not cleaned his office, and told him Appellant was to skip an area if somebody was working there; Appellant's March 13, 2003 call to McQueary in which Appellant complained of staff being in his way, during which he refused to double back to clean occupied areas despite being repeatedly instructed to do so previously; Appellant's absence from the Lowry facility on the night of March 13, 2003 for an indeterminate period of time; and the answering machine message at 8:14 a.m. of March 14, 2003. The letter also references Appellant's prior disciplinary actions. Hamblin further considered Appellant's failure to acknowledge or respond to any of the allegations during the predisciplinary meeting significant.

37. Appellant was issued the following disciplinary actions in the five-year period prior to the action giving rise to this case:

- August 24, 2001 Written Reprimand for threatening and intimidating a fellow employee at the Lowry Clinic (Exhibit 5).
- September 1, 2000 Written Reprimand for neglect of duty, refusing to comply with orders of an authorized supervisor, failure to report for assigned shift, and unauthorized absence (Exhibit 7).

38. The Agency prepared a Letter of Dismissal dated April 23, 2003, effective that date (Exhibit 2). Appellant timely appealed on April 25, 2003 (Exhibit 1).

DISCUSSION

1. Jurisdiction

The hearing officer finds she has jurisdiction to hear this case as a dismissal pursuant to CSR 19-10 b), which states as follows in relevant part:

Section 19-10 Actions Subject to Appeal

An applicant or employee who holds career service status may appeal the following administrative actions relating to personnel.

...b) Actions of appointing authority: Any action of an appointing authority resulting in dismissal... which results in alleged violation of the Career Service Charter Provisions, or Ordinances relating to the Career Service, or the Personnel Rules.

2. Burden of Proof.

The City Charter, C5.25 (4) and CSR 2-104 (b) (4) require the hearing officer to determine the facts of the case "*de novo.*" This means that she is mandated to make independent determinations of the facts and resolution of factual disputes. Turner v. Rossmiller, 535 P.2d 751 (Colo. App. 1975.) In *de novo* administrative proceedings such as this one, the level of proof required for a party to prove its case is a *preponderance of the evidence.* This means that the party bearing the burden must demonstrate that the assertions it makes in support of its claims are more likely true than not.

The Agency responsible for disciplining a career-status employee bears the burden of showing cause for the disciplinary action. CSR 5-62. The hearing officer must also find the severity of discipline is reasonably related to the nature of the offense in question, in light of the employee's past record. CSR 16-10; *see,* Department of Institutions v. Kinchen, 886 P.2d 700 (Colo. 1994).

3. Cause for Discipline.

a. The Agency has proven factual allegations of wrongdoing by Appellant.

Hamblin testified that the reasons she chose dismissal were all the issues identified in the dismissal letter (Exhibit 2). Those issues are as follows in this order. First was Appellant's failure to comply with special instructions to prepare for the mock inspection on March 10, 2001. Second was the complaint Hamblin received from Kornfeld on March 11, 2003, that Appellant had failed to clean his office, then erroneously told him Appellant was to skip an area if somebody was working in the area. Third was the call Appellant to McQueary on March 13, 2003 in which Appellant complained of staff being in his way, and again refused to double back to clean occupied areas. Fourth was Appellant's absence from the Lowry facility on the night of March 13, 2003 for an indeterminate period of time. Fifth, the letter listed the answering machine message at 8:14 a.m. of March 14, 2003. Finally, Hamblin indicates she considered Appellant's prior disciplinary actions. Hamblin stated she further considered it significant that Appellant failed to acknowledge or respond in any way to any of the allegations during the predisciplinary process.

The Agency has shown the following by a preponderance of the evidence. Appellant refused to double back and clean areas of the health clinic occupied by staff working late on the dates alleged. Appellant complained to hospital staff, as well as his own supervisors, about staff working late, despite being told repeatedly to double back because this was an accepted part of business at the health clinic. Appellant further failed to complete the special items assigned to him on the evening of March 10, 2003 for the mock inspection which took place the following morning.

Under the facts proven, the hearing officer concludes that Appellant has violated CSR 16-50 A. 7), refusing to comply with the orders of an authorized supervisor or refusing to do assigned work, CSR 16-51 A. 2), failure to meet established standards of performance, CSR 16-51 A. 4), failure to maintain satisfactory working relationships with co-workers, CSR 16-51 A. 5), failure to observe departmental standards, CSR 16-51 A. 6), carelessness in the performance of duties, and CSR 16-50 A.10), failure to comply with the instructions of an authorized supervisor.

The Agency has further shown by a preponderance of the evidence that Appellant was absent from work from 9:07 until 10:17 p.m. during the evening of March 13, 2003. Even assuming half an hour of this time were his lunch break, this means Appellant was absent without leave for at least forty minutes, in violation of CSR 16-50 A. 13), unauthorized absence from work, which includes taking unauthorized breaks.

b. Elements the Agency has not shown.

As to the telephone message left on McQueary's answering service, Appellant argues that he did not place the call during work hours and therefore it cannot be considered grounds for discipline by the Agency. Appellant further asserts that this message was not in any way threatening.

The hearing officer is not persuaded by the Appellant's argument that he left this message while he was not on duty. The message was to Appellant's supervisor, and by Appellant's own testimony, the content of the message clearly related to an incident that happened between Appellant and another worker while they were both on duty. The fact that Appellant may or may not have left the message while he was on duty is irrelevant. As a matter of common sense, answering devices make it possible to leave messages at any time of the day. The call would have had precisely the same effect whether it was made while Appellant was on duty or not, making the time the call was placed an arbitrary consideration.[1] The hearing officer therefore concludes that the message was work-related for purposes of this appeal.

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[1] Appellant provided no cases in support of his argument that the telephone message should not be actionable because it was not left while Appellant was on duty. There do not appear to be any Colorado cases that address this situation. However, the hearing officer finds Blake v. State Personnel Board, 25 Cal. App. 3d 541 (1972) instructive in this case. In Blake, the California Court of Appeals stated:

> ..[T]he mere fact that the misbehavior occurred outside of working hours ought not to immunize the misbehaving superior from disciplinary action under (the governing personnel rules). To say that disciplinary action could not be taken for such misconduct simply because it occurred, for

The hearing officer is persuaded that McQueary and Hamblin misinterpreted the phone call. There is no clear "threat" in the telephone message. Rather, Appellant was upset because what he believed McQueary said to Hooks put *Appellant* in danger. This was Appellant's state of mind when he made the phone call. Furthermore, although he is clearly distressed, Appellant does not raise his voice during the call (Exhibit 9). The words of the call may be stronger than is appropriate in the work setting, but Appellant and McQueary considered each other friends. The comfort level between individuals who consider themselves friends is higher, even when one is a supervisor and the other is a subordinate. This friendship partially mitigates the impropriety of the language contained in the message.

In addition, the telephone message was cryptic and strange until Appellant offered his explanation during his testimony at the hearing. The message only makes sense in light of Appellant's explanation for it. The hearing officer finds Appellant's testimony concerning the reason for his message credible, in light of the message itself. Executive Order 112 (Exhibit 8) prohibits "violence, or the threat of violence..." Therefore, the hearing officer concludes that given Appellant's state of mind when leaving the message, a preponderance of the evidence does not show that Appellant violated CSR 16-50 A. 18) Conduct which violates an executive order which has been adopted by the Career Service Board; specifically, Executive Order 112, Violence in the Workplace. Therefore, these allegations are dismissed.

However, the hearing officer further concludes that neither McQueary nor Hamblin knew of Appellant's belief that McQueary told Hooks Appellant had reported seeing Hooks in the parking lot engaging in illicit activities. Understandably, McQueary and Hamblin were put off balance by the content of the call and perceived it as "threatening." Without any knowledge of these allegations, it was a strange thing for Appellant to have done. Reasonable individuals would be intimidated and react with fear to this message, given the lack of any such explanation. Therefore, for reasons set forth below in the section addressing the severity of discipline, the Agency's misinterpretation of this call does not impact its decision to terminate Appellant.

The Agency has also charged Appellant with "gross negligence or willful neglect of duties" in violation of CSR 16-50 A. 1). "Gross negligence" suggests a higher level of culpability than mere negligence. Use of the term in this context means flagrant or beyond all allowance, Lee v. State Board of Dental Examiners, 654 P.2d 839 (Colo.

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example, while the two were leaving the office or plant after the close of the business day or at a social gathering would be clearly contrary to the spirit and purpose of the statute.

...The nature of the misbehavior and its effect on the public service rather than the time or place of its occurrence should be the determinative factors. If the misconduct bears some rational relationship to the employment and is of a character that can reasonably result in the impairment or disruption of public service, it should be no less a cause for discipline under (the governing personnel rules) simply because it occurred outside of duty hours. In determining whether an employee should be disciplined, whatever the cause, the overriding consideration is whether the conduct harms the public service.

1982), or showing an *utter* lack of responsibility. People V. Blewitt, 192 Colo. 438, 563 P.2d 1 (1977) (emphasis added). Black's Law Dictionary, 5th Edition (1979) defines "gross negligence" as:

> The intentional failure to perform a manifest duty in reckless disregard of the consequences as affecting the life or property of another. It is materially more want of care than constitutes simple inadvertence. It is an act or omission respecting a legal duty of an aggravated character as distinguished from a mere failure to exercise ordinary care... Ordinary and gross negligence differ in degree of inattention, while both differ in kind from willful and intentional wrong...

"Willful neglect," on the other hand, implies that the wrongful conduct is a blatantly intentional or conscious violation. Black's defines it as follows:

> The intentional disregard of a plain or manifest duty... Willful neglect suggests intentional, conscious, or known negligence – a knowing or intentional mistake. Puget Sound Painters, Inc. v. State, 45 Wash.2d 819, 278 P.2d 302, 303 (Wash. 1954).

Thus, the terms "gross negligence" and "willful neglect" are generally reserved for use in only the most extreme cases of neglect, representing a high degree of risk or potential damage to the person or property of another. The hearing officer concludes that while Appellant engaged in certain unacceptable actions, none of the actions shown rises to the level of "gross negligence" or "willful neglect. Instead, Appellant's unacceptable actions are better characterized by many of the lesser charges set forth above. The charge of a violation of CSR 15-50 A. 1) is therefore dismissed.

CSR 16-50 A. 20) and CSR 16-51 A. 11) are both catch-all regulations that are extraneous in this case, where other specific violations have been shown. These alleged violations are therefore dismissed.

Based on the totality of this evidence, the hearing officer concludes that the Agency has shown cause for disciplining Appellant.

4. Severity of the discipline.

In determining the appropriateness of a given disciplinary action, the test is whether the severity of discipline is "reasonably related" to the seriousness of the offense. *See,* CSR 16-10. To be reasonably related, the discipline chosen must be "within the range of reasonable alternatives available to a reasonable, prudent agency administrator." *See,* Adkins v. Div. of Youth Services, 720 P.2d 626 (Colo. App. 1986). In determining the reasonableness of the discipline, the hearing officer therefore will not substitute her judgment for that of the Agency unless the discipline is clearly excessive, or is substantially based on considerations that are unsupported by a preponderance of the evidence.

Appellant argues that the Agency's reason for terminating Appellant is the telephone message of March 14, 2003. Appellant asserts that the Agency would not have elected to terminate Appellant were it not for this message.

The hearing officer is not persuaded that the Agency fired Appellant "because of the phone call" as Appellant insists. Hamblin considered all the allegations in the Contemplation Letter (Exhibit 3) only one of which was the phone message, and she further considered Appellant's prior disciplinary history. While Hamblin considered the telephone answering machine message to be significant, when asked what if there had been no such message, she testified the other concerns also weighed into her decision to terminate Appellant, notwithstanding the phone call. Therefore, the hearing officer concludes that while Hamblin considered the telephone answering machine message to be significant, there were other concerns that were also significant to her decision to terminate Appellant notwithstanding the phone call.

In addition, it was apparent to the hearing officer that the first time the Agency became aware of the Appellant's explanation for the call was during his testimony at the hearing. The Agency held a predisciplinary meeting precisely to give Appellant the opportunity to respond to the allegations, which in this case would include responding with an explanation why the call in question was *not* threatening. While an employee has the right to refrain from making a statement at a predisciplinary meeting, he does so at his own risk.

Finally, Hamblin considered Appellant's past disciplinary actions. One of those actions was the September 1, 2000 Written Reprimand for neglect of duty, refusing to comply with orders of an authorized supervisor, failure to report for assigned shift, and unauthorized absence (Exhibit 7). The nature of these violations is sufficiently similar to several of those proven in this case for Appellant to have been put on notice that his performance in these areas must improve or he might be subject to further disciplinary action, including dismissal. *See,* CSR 16-51 A. (*above*); *See also,* Written Reprimand of September 1, 2000, which states that [f]urther violations may be cause for additional disciplinary action which may include suspension, involuntary demotion and/or dismissal." (*See,* Exhibit 7, p. 3.)

The hearing officer finds that the evidence supports a substantial portion of the factual allegations against Appellant. Based on the Agency's factual showing Hamblin's stated rationale for choosing to terminate Appellant, and Appellant's past disciplinary record, the hearing officer concludes that dismissal is within the range of reasonable alternatives available to the Agency. Therefore, she will not disturb that decision on review.

CONCLUSIONS OF LAW

1. The Agency has demonstrated by a preponderance of evidence that Appellant engaged in violations of the following:

a) CSR 16-50 A. 7) Refusing to comply with the orders of an authorized supervisor or refusing to do assigned work which the employee is capable of performing;
b) CSR 16-50 A. 13) Unauthorized absence from work, including but not limited to... leaving work before completion of scheduled shift without authorization; or taking unauthorized breaks;
c) CSR 16-51 A. 2), Failure to meet established standards of performance, including either qualitative or quantitative standards;
d) CSR 16-51 A. 4) Failure to maintain satisfactory working relationships with co-workers, other City and County employees of the public;
e) CSR 16-51 A. 5) Failure to observe departmental regulations or standards;
f) CSR 16-51 A. 6) Carelessness in the performance of responsibilities;
g) CSR 16-51 A. 10) Failure to comply with the instructions of an authorized supervisor.

3. The Agency has failed to demonstrate Appellant engaged in violations of:

a) CSR 16-50 A. 1), Gross negligence or willful neglect of duty;
b) CSR 16-50 A. 18) Conduct which violates an executive order which has been adopted by the Career Service Board (specifically, Executive Order 112, Violence in the Workplace);
c) CSR 16-50 A. 20) and CSR 16-51 A. 11); unspecified residual disciplinary rules.

3. The Agency has shown cause for disciplining Appellant.

4. In light of the totality of evidence in this case, the Agency's decision to terminate Appellant is reasonably related to the seriousness of the offenses that have been shown.

DECISION AND ORDER

Based on the Findings and Conclusions set forth above, the Agency's decision to terminate Appellant is AFFIRMED. The Agency is ORDERED to MODIFY the disciplinary letter in Appellant's personnel files by editing all existing copies to remove references to offenses not shown by a preponderance of evidence as determined by this decision, specifically the charges specified above under Paragraph 2 of the Conclusions of Law, and any and all references to a "threatening" telephone message.

Dated this 18th day of August, 2003.

Joanna Lee Kaye
Hearing Officer for the
Career Service Board