

DECISION AFFIRMING DISMISSAL

SHANE GAULE, Appellant,

v.

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

I. INTRODUCTION

Appellant Shane Gaule (Appellant) appeals his dismissal from employment at Denver International Airport for alleged violations of Career Service Rules specified below. On May 7 and May 21, 2019, Hearing Officer Bruce A. Plotkin conducted a hearing to determine the propriety of the discipline. Assistant City Attorneys Rachelle E. Hill and Katherine R. Brown represented the Agency and Christopher M.A. Lujan, Esq. represented the Appellant. The Agency's exhibits 1-3, 5, 6, and 8-12 were admitted into evidence, as were Appellant's exhibits H-J.¹ The following witnesses testified during the Agency's case-in-chief: Steven Choquette, Fleet Maintenance Manager; the Appellant; Jeff Booton, Senior Director of Maintenance; Alex Herrera, Fleet Technician II; and Gisela Shanahan, Chief Financial Officer and decision-maker in this discipline. The Appellant testified on his own behalf during his case-in-chief and presented no additional witnesses.

II. ISSUES²

The issues presented for appeal were:

- A. whether the Appellant violated CSRs 16-28 I., R., and T.; and if so,
- B. whether the Agency's decision to dismiss Appellant conformed to the purposes of discipline under CSR 16-41 as measured by a reasonable, prudent administrator.

III. FINDINGS

The Appellant, Shane Gaule, was a Career Service City employee since 2006. He was promoted to Fleet Technician III at Denver International Airport in 2018. As with all Career Service employees, he was subject to the Career Service Rules, Executive Orders including the prohibition against violence in the workplace and the Agency's zero-tolerance for violence. In addition, the Agency takes a zero-tolerance position on physical horseplay, since its employees work with large, heavy machinery and parts, and safety is of paramount importance.

On December 10, 2018, Gaule was at work with several co-workers. Gaule was bent over the parts counter, ordering parts. Alex Herrera was behind him when another co-worker, Mathew Caple, approached and joked to Herrera, - intentionally loud enough for Gaule to hear - "can't stand too close." While the remark had no meaning to Herrera, it was lathered in significance to Gaule, who turned around and grabbed Caple by the shirt collar with both hands, as he said, "do you have a problem?" Caple responded, "don't put your hands on me." Gaule answered the warning by placing Caple in a headlock,

¹ Agency exhibits 1,3,5, and 6 were stipulated statements by eye-witnesses who did not testify at hearing.

² Appellant claimed age and disability discrimination. Those claims were dismissed before hearing. See Order dated 2/20/19.

but Caple was holding a hose full of brake cleaning fluid which he dumped on Gaule's head. The fluid ran into Gaule's eyes, stinging them. Gaule punched Caple, then ran to flush his eyes.

Gaule returned to confront Caple, standing six inches or less from him while they threatened each other's jobs. Co-worker Herrera sensed a fight was about to ensue, stepped in, placed his hands on their shoulders, and asked them to calm down.

Gaule went to his supervisor to report Caple sprayed brake cleaner in his eyes, but omitted any mention of his role in the encounter. Based on Gaule's statements, paramedics were called to treat his eyes and Denver Police were called to investigate possible criminal wrongdoing by Caple.

Following an investigation, the Agency served Gaule with a letter in contemplation of discipline, then held a contemplation of discipline meeting on December 20, 2018, which Gaule attended without a representative. The Agency's notice of dismissal issued on January 14, 2019, followed by Gaule's appeal on January 25, 2019.

IV. ANALYSIS

A. Jurisdiction and Review

The Career Service Hearing Office has jurisdiction of this appeal of a dismissal pursuant to CSR 19-20 A.1.a. I conducted a *de novo* review, meaning I considered the evidence as though no previous action had been taken. Turner v. Rossmiller, 532 P.2d 751 (Colo. App. 1975); CSR 19-55 A.

B. Burden and Standard of Proof

The Agency retained the burden of proof, throughout the case, to prove that Appellant violated CSR 16-28 I., R., and T., by a preponderance of the evidence, and to prove the discipline it imposed was within a reasonable range of alternatives. CSR 19-55 A.

These are the undisputed salient facts: Gaule was the initial physical aggressor; he grabbed Caple by the collar; placed him in a headlock; Caple poured brake cleaner on Gaule which ran into his eyes; Gaule struck Caple; then, after disengaging to wash his eyes, Gaule returned to confront Caple again. Those facts established the following violations.

C. Career Service Rule Violations

1. CSR 16-28 I. Failure to maintain satisfactory working relationships with co-workers and other individuals the employee interacts with as part of his or her job.

Conduct violates CSR 16-28 I. if it would cause a reasonable person standing in the employee's place to believe it would be harmful to others or have a significant impact on their working relationship. In re Schofield, CSA 08-17, 13 (10/9/17), citing In re Perry-Wilborne, CSA 62-13, 8 (5/22/14); In re Williams, CSA 53-08, 5 (12/19/08), *aff'd* In re Williams, CSB 53-08 (5/14/09); In re Burghardt, CSB 81-07, 2 (8/28/08).

Gaule admitted he violated this rule by "getting in a physical altercation" with Caple. [Gaule cross-exam]. No more is required to establish this violation. Gaule's subsequent statement that he would be able to work with Caple in the future, [Gaule testimony], is immaterial, given the objective standard required by this rule. In re Schofield, CSA 08-17, 13, 14 (10/9/17); In re Burghardt, CSB 81-07, 2 (8/28/08).

Even without Gaule's admission, the objective evidence would have proven the violation. Herrera's testimony was un rebutted. He was credible. He was in very close proximity to both Gaule and Cable during the incident. He wrote his recollection of the incident, Exhibit 2, shortly afterward. His testimony was consistent with his written statement, in which he described Gaule initiating the fight, by grabbing

Caple, and placing him in a headlock. Engaging in a fight with a co-worker is, *per se*, a failure to maintain a satisfactory working relationship.

2. **CSR 16-28 R. Conduct which violates the Career Service Rules, the City Charter, the Denver Revised Municipal Code, Executive Orders, written departmental or agency regulations, policies or rules, or any other applicable legal authority. When citing this subsection, a department or agency must cite the specific regulation, policy or rule the employee has violated.**

Executive Order 112 violence in the City Workplace

2.0 Policy: violence has no place in any of the City and County of Denver’s work locations or at any City-sponsored event and is strictly prohibited.

City employees who perpetrate violence, whether on-duty or off-duty... may be subject to disciplinary action, up to and including dismissal...

Examples of unacceptable behavior prohibited by this Executive Order include...

- a. **Intimidating, threatening or hostile behaviors, physical assault...**

3.0 Definitions:

Violence is defined, but not limited to:

(a) the actual or attempted: physical assault, beating, improper touching, striking, shoving, kicking, grabbing, stabbing, shooting, punching...

(b) the actual or attempted: threatening or abusive behavior (physical or verbal)...

4.0 Disciplinary Action:

Any violation of this policy by employees, including a first offense, may result in disciplinary action, up to and including dismissal...

Gaule admitted that grabbing Caple by the collar violated E.O. 112. He admitted placing Caple in a headlock in violation of E.O. 112. Gaule also admitted that punching Caple violated E.O. 112.³

Had Gaule not confessed the violation, the objective evidence would have established this violation. Herrera was a witness to the incident, he was right next to both participants, and his credibility was not challenged. He wrote a statement about the incident almost immediately afterward, [Exh. 2]. In that statement, and at hearing, Herrera declared Gaule was the initial aggressor, grabbed Caple, put him in a headlock, punched him, then retreated to wash his eyes, but returned, unprovoked, to re-engage aggressively [got in his face”) with Caple. These facts establish physical assault and threatening behavior in violation of E.O. 112.

Gaule’s previous explanations⁴ for his conduct became immaterial when he admitted each violation. Gaule alleged medical reasons for the assault related to degree of discipline and not to violation of this rule. See [In re Christianson](#), CSA 17-18, 4 (8/6/18).

³ In view of his previous denial of any rule violations, Gaule’s sudden admissions had the explosive effect of Colonel Jessup answering the question “did you order the code red?” with “you’re goddamn right I did!”

⁴ Appellant claimed he received his contemplation letter only the same day as his hearing (but agreed to proceed); that Caple and he had a joking, horse playing relationship; that he had Post-Traumatic Stress Disorder; that he struck Caple strictly in self-defense; and that he did not initially place Caple in a headlock, rather he hugged Caple around one shoulder but Caple ducked, thereby creating the headlock. While the first three “defenses” are unconvincing, this last explanation is patently incredible.

Gaule said he intended his actions to be horseplay. The recipient's reasonable reaction, and not actor's intent, is the focus of E.O. 112's prohibition against workplace violence. [In re Lykken](#), CSA 26-10, 7 (7/7/10). Caple's reactions to Gaule made it clear, along with Herrera's statement and testimony, that Gaule was not engaging in horseplay.

Evidence was conflicting whether Gaule and Caple had a history of horseplay. It does not matter. The objective evidence was that Gaule's headlock of Caple was unwelcome, as noted by Herrera and as evidenced by the brake cleaner shower that Caple provided to Gaule's head. Gaule's admission, and the objective evidence, independently prove this violation.

3. Conduct which is or could foreseeably:

1. Be prejudicial to the good order and effectiveness of the department or agency;

...
3. Be unbecoming of a City employee.

Gaule admitted this violation. "You would agree that getting into a physical altercation with a co-worker at work is unbecoming?" "Yes." [Gaule cross-exam]. In addition, Gaule's grabbing a co-worker by the collar, putting him in a headlock, striking him, and returning to engage angrily with him, was conduct prejudicial to the good order and effectiveness of his department. Other co-workers were distracted from their duties, one had to intervene, and multiple resources, including OHR, the Denver Police Department, and multiple supervisors were taken from their other duties to address Gaule's actions. Assaulting a co-worker is also unbecoming a City employee.

V. DEGREE OF DISCIPLINE

Once Gaule admitted every violation, the only remaining issue was the degree of discipline. Pursuant to CSR 16-41, the purpose of discipline is to correct inappropriate behavior or performance, if possible. The type and severity of discipline depend on three factors.

1. Seriousness of the proven offense

The Agency presented persuasive, un rebutted evidence that violence in the workplace is among the most serious violations, and that the Agency has a zero tolerance for violence. [E.O. 112; Appellant testimony; Choquette testimony; Booton testimony; Shanahan cross-exam].

2. Prior Record

Gaule had no prior violations that counted against him in this case.

3. Likelihood of Reform

Gaule's admission of wrongdoing at hearing appeared sincere. That admission must be weighed against Gaule's earlier claims, including claims that: he was just joking around; he struck Caple in self-defense; Caple was the initial aggressor; he merely hugged Caple around the shoulder but Caple ducked into a headlock; immediately after the incident he told his supervisor Caple poured brake cleaner on him while omitting his instigation of the incident; his report of the incident caused police to investigate possible criminal activity by Caple; he said at his pre-disciplinary meeting "I don't know what made him snap and pour a chemical in my face and on my head." [Exh. 9 at 4:39-5:15].

These factors justified the Agency's conclusion that Gaule's acceptance of responsibility was unconvincing. Based on the findings and conclusions above, the Agency's decision to dismiss Gaule was within the range of penalties available to a reasonable and prudent administrator, [In re Redacted](#), CSB 67-11A (4/4/13)], and was not clearly excessive. See [In re Economakos](#), CSB 28-13A, 2 (3/24/14). Further, the penalty conformed with the purposes of discipline and progressive discipline under CSR 16-41 and 16-42. See [Christianson](#), *supra*.

VI. ORDER

The Agency's dismissal of Appellant's employment on January 14, 2019, is AFFIRMED.

DONE May 29, 2019.



Bruce A. Plotkin
Career Service Hearing Officer

NOTICE OF RIGHT TO FILE PETITION FOR REVIEW

You may petition the Career Service Board for review of this final order, in accordance with the requirements and limitations of CSR § 21-20 et seq., within fourteen calendar days after the date of mailing of the Hearing Officer's decision, as stated in the certificate of delivery, below. See Career Service Rules at www.denvergov.org/csa. All petitions for review must be filed with the:

Career Service Board

c/o OHR Executive Director's Office
201 W. Colfax Avenue, Dept. 412, 4th Floor Denver, CO 80202
FAX: 720-913-5720
EMAIL: CareerServiceBoardAppeals@denvergov.org

Career Service Hearing Office

201 W. Colfax, Dept. 412, 1st Floor Denver, CO 80202
FAX: 720-913-5995
EMAIL: CSAHearings@denvergov.org.

AND opposing parties or their representatives, if any.