

DECISION AND ORDER AFFIRMING DISMISSAL

CYNTHIA HINOJOSA, Appellant,

v.

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

I. INTRODUCTION

Appellant Cynthia Hinojosa (Appellant) appeals the Denver Human Services' (Agency) April 12, 2018 dismissal of her, for alleged violations of specified Career Service Rules (CSRs).¹ On November 6, 7, 9 and 19, 2018, Hearing Officer Federico C. Alvarez conducted a hearing to determine the propriety of the discipline. Assistant City Attorney Sherri Catalano represented the Agency and Patricia Bangert, Esq. represented the Appellant. The Agency's exhibits 1 through 13, 17 through 21, and 24 through 31; and Appellant's exhibits A through V, Y, Z, AA, BB, and DD were admitted into evidence.² The following witnesses testified on behalf of the Agency: Bettina Schneider, Deputy Executive Director-CFO, Jessie Counts, Division Director, Tara Segura, Privacy Officer, Robert Baker, Lead Internal Auditor, Justin Sykes, Program Manager, David Vogel, Senior Investigator, Flynn Investigations Group, and Kris Kogan, Director of Mill Levy (ML), Rocky Mountain Human Services (RMHS). The Appellant testified and William Doyle, former Agency Lead Auditor, and John Danley, RMHS employee, also testified on her behalf.

II. ISSUES

The following issues were presented for appeal:

- A. whether Appellant violated CSRs 16-29 D, G, R, and T;³ and
- B. if Appellant violated the aforementioned CSRs, whether the Agency's decision to dismiss her conformed to the purposes of discipline under CSR 16-41.

III. FINDINGS

Appellant has had several jobs with the City and County of Denver (City). It hired her: (1) from May 19, 2008 through October 9, 2009 as an intern; (2) on November 14, 2011 as a Case Management Coordinator, which she resigned on January 7, 2013; (3) on January 8, 2013 as a Personal Property Analyst; (4) on April 1, 2014 as a Staff Accountant for which she failed

¹ At the close of the hearing, Appellant withdrew her discrimination claim from these proceedings.

² Appellant's exhibits W and X are preserved for the record as parts of her offer of proof as to the expected testimony of proposed witnesses Pollins and Nguyen, whom the Hearing Officer struck.

³ CSR 16-29 has been renumbered as 16-28 but these subsections remained identical.

probation, so she reverted to an Analyst; and (5) on March 3, 2016 as an on-call Business Development Associate. (Ex. 1). On March 22, 2016, it hired Appellant to work as a Senior Internal Auditor in its Performance Improvement and Accountability Division (PIAD).

In this role, Appellant monitored and audited the City's funding of RMHS for its service to the City's clients with intellectual and developmental disabilities (IDD). The City collects taxpayer ML funds for its IDD clients, which it had been required to spend exclusively through RMHS. Prior to her dismissal, Appellant alternated time between two Denver offices, three days weekly at the Denver Human Services Castro Building (Castro Building), 1200 Federal Boulevard, and two days weekly at the RMHS Building, 9900 East Iliff Avenue. Appellant, Mr. Baker, and Ms. Segura were the three PIAD auditors. They occupied adjacent desks in a small open area at the Castro Building. They and others with whom they worked accessed a shared calendar in which they were to document all meetings away from this worksite. (Ex 6, P. 22, par. 5). Ms. Segura was already a PIAD auditor when the agency hired Appellant. In October 2017, the Agency hired Mr. Baker as PIAD Lead Auditor, replacing Mr. Doyle. Mr. Doyle had been the supervisor of the auditors until August 8, 2016, when the Agency demoted him to Lead Auditor, and, in May 2017, he left the Agency. Since June 2016, when Ms. Counts became a director, she supervised the PIAD auditors, and began bi-weekly, individual meetings with them to discuss their work.

At an October 16, 2017 staff meeting, Ms. Counts distributed to the auditors the "Expectations for Internal Audit Team" (Expectations), generally governing attendance and location details. The City's Office of Human Resources had provided the Expectations to Ms. Counts as a first step to managing attendance issues, including Appellant's issues, of which she had received complaints. Due to the complaints, Ms. Counts also instructed Mr. Baker to report to her any of Appellant's attendance issues that he observed. Ms. Schneider testified that Ms. Counts reported to her on complaints about Appellant as early as August and September 2017. On November 29, 2017, Ms. Counts emailed the auditors a modified version of the Expectations, with employee feedback incorporated. (Ex. 6, pp. 22-3). It contains the Rule 6, "Show up to all scheduled events on time unless a business need prevents you...If you are more than 5 minutes late to a meeting, please send an email before COB explaining the business need."; and the Rule 10, "If you need to take off due to illness or unexpected event let me know via text/email as soon as you can. My cell phone is ..." (*Id.*) Appellant's 2016 Supervisor Evaluation (Evaluation) (Ex. 6, p. 26), and her 2017 Annual Review (Review) (Ex. 6, p. 13) also included in her goals, "... Attending all...RHMS (sic) Community Forums, Board of Director Meetings, and all meeting (sic) identified as material between DHS and RMHS."

On December 6, 2017, Appellant was scheduled to work at and attend a training at the RMHS Building, which she did not attend. At 7:58 a.m., Appellant texted co-worker Mr. Sykes that she was running late because she had gone to the Castro Building. At 11:57 a.m., Appellant again texted Mr. Sykes that she had skipped the training because Mr. Baker assigned her some BKD work and that she had gone to her office instead. However, Mr. Baker testified that, on this day, he merely needed for Appellant to transfer a file from her computer to a folder on the Agency computer, and that she was not doing any BKD work, on which Ms. Segura was his backup. Ms. Counts testified that the Agency did not show Appellant working at the Castro Building on this day. So, the Agency alleged that Appellant invented an excuse to avoid the training, and inflated her work hours on this day.

Appellant responded that she communicated truthfully to Mr. Sykes about her delay. She testified that she was working on an EBT audit, and her reference to BKD meant her EBT work, since the BKD auditors reviewed the EBT work. She denied having told him that she was at the Castro Building via her texts, claiming that she went straight to the RMHS Building that

morning. She claimed that the reference to her "office" meant an RMHS Building office that RMHS allowed her to use, since she had no office at the Castro Building.

On January 17, 2018, Appellant failed to attend a RMHS board meeting. At 5:46 p.m., she texted Mr. Sykes that she would miss the meeting because she was feeling ill and asked him to take notes of it for her, to which he agreed. Mr. Sykes also observed that the board disconnected the telephone line through which people could attend the meeting when nobody called in. On January 18, Mr. Sykes saw Mr. Baker and Ms. Segura at the Castro Building and told them of Appellant's absence from the board meeting due to illness. He asked whether Appellant was now present, so he could brief her on it. They responded that she had not arrived so he returned to his office. Appellant then arrived, immediately went to Mr. Sykes's office, and debriefed him on the meeting. Appellant then returned to the auditors' area and discussed the board meeting with Mr. Baker and Ms. Segura, conveying to them the impression that she had attended it, unaware that they knew that she had missed it.

On January 19, 2018, Appellant submitted a Bi-Weekly Mileage Summary for Personal Vehicle Usage Log for January 7 through 20. (Ex. 8, p. 34). Through it, she claimed and obtained mileage reimbursement for travel to the January 17 RMHS board meeting. In her March 21, 2018 interview with Mr. Vogel (Interview), Appellant claimed that on January 17, she left the RMHS Building at 5:15 p.m., went home, fed her dogs, and returned at 5:46 p.m. to attend the meeting, in a 31-minute round-trip. She claimed to have felt ill when she arrived at the RMHS Building and so she left, texting Mr. Sykes as she did so. At hearing, Appellant testified that her routine to feed her dogs took her less than five minutes. Mr. Vogel testified that he researched her trip home and that it cannot be made in 31 minutes, thus concluding that Appellant's January 17 time report and mileage claim, in combination, are incredible.

On January 19, Appellant also approved her timecard, including 11 hours of work on January 17. Appellant claimed in her Interview to have worked at the RMHS Building continually without lunch⁴ or other breaks from 6:15 a.m. to 5:15 p.m., when she went home. Other Agency witnesses testified that, by contrast, when Appellant worked at the Castro Building, she arrived around 9:00 a.m., took lunches and breaks, and spent time on social media. Her employee badge log showed that she generally accessed its secure area from 8:45 to 9:00 a.m. Appellant admitted to Mr. Vogel that she took lunch and breaks when working at the Castro Building.

At their January 23, 2018 bi-weekly meeting, Mr. Baker disclosed to Ms. Counts that Appellant had missed a meeting, but was pretending otherwise. His report prompted her to scrutinize Appellant's attendance. At their January 25, bi-weekly meeting, Ms. Counts asked Appellant whether she had missed any meetings that she was required to attend. Appellant denied any absences and asked the basis for the inquiry. Ms. Counts disclosed to her Mr. Sykes's comment that she had missed a meeting. Appellant offered to clarify with Mr. Sykes his comment about her absence. He testified that Appellant queried him about whether she had missed any meetings. He described meetings to her that he had with the RMHS executive team on Monday of the current week, to which he had not invited her. He had assumed that she had not asked about the board meeting since he had already briefed her on it. Appellant then advised Ms. Counts that she had no absence and that Mr. Sykes had reported her absent from a meeting to which she was not invited. Thus, she did not report her absence from the board meeting to Ms. Counts, as required by Expectation Rule 10.

⁴ Appellant stated that she habitually ate lunch at her desk at the RMHS Building, but did not stop working.

Appellant responded to the Agency's allegation that she fabricated the impression of attending the January 17 board meeting by noting that she never claimed to have attended it. At hearing, she testified that Mr. Baker and Ms. Segura testified falsely that she described the board meeting to them on January 18, and that Mr. Sykes merely advised her that nothing material occurred at the meeting. At her April 11, 2018 pre-disciplinary meeting, Appellant claimed to have attempted to attend the board meeting by telephone.

Appellant responded to the Agency's allegation of her incredible January 17 time and mileage, that, to the best of her recollection, she had worked 11 hours and traveled home. At hearing, she testified that she could have left work earlier to go home but did not address the concept that, had her trip home taken longer, she could not have worked 11 hours. She noted that she got no benefit from reporting 11 versus fewer hours. Appellant explained her different work habits at the RMHS Building as due to her strained auditor-auditee relationship with RMHS, that caused her to remain in her office and avoid socializing with its employees.

On February 1, 2018, Appellant, in a response related to her request to move her parking privileges to the Castro Building Garage's first level, told Ms. Counts that she had been parking at "The very bottom. Anywhere the green pass gets you." Appellant had a contract then for parking in the Garage's bottom level. Ms. Counts determined that Appellant had not accessed the Garage with her badge for months. Security Supervisor Kyle Knoedler determined from Garage videos from January 6 through 26, 2018 that Appellant had not parked in it during those dates but had parked in the visitor parking at times. Whether Appellant parked in the Garage's bottom level or elsewhere did not affect her request for first level parking, which Ms. Counts accommodated. Nevertheless, the Agency disciplined Appellant in part for misrepresenting her then parking habits. Appellant responded to the Agency's allegation that she answered Ms. Counts's question falsely by noting that she accurately described her parking contract.

On March 15, 2017, Appellant obtained mileage reimbursement for two trips to the RMHS Building and reported 14 hours of work. Through these entries, Appellant documented that, on March 15, she traveled to work at the RMHS Building, to her home, and again to the RMHS Building for a board meeting. Appellant stated in her Interview that she worked from 6:30 a.m. to 9:15 p.m. without lunch or breaks, for a total time of 14 hours and 45 minutes. The board meeting minutes document it as from 6:42 p.m. to 8:30 p.m. but Appellant testified that she stayed after the meeting to speak to others. After deducting her claimed 14 hours of work from her total time, Appellant would have had 45 minutes for her trip home, which she testified that she made at or before 4:00 p.m. Mr. Vogel testified that Appellant could not have gone home and back in 45 minutes, thus concluding that her combined time report and mileage claim were incredible.

Appellant responded to the Agency's allegation of her incredible March 15 time and mileage, that, to the best of her recollection, she had worked 14 hours and made two trips. She also testified that perhaps she could have left work earlier than 4:00 p.m. to feed her dogs but she did not address the concept that, had her trip home taken longer than 45 minutes, she had could not have worked 14 hours. She again noted that she got no benefit from reporting 14 versus fewer hours. Appellant also noted that her different work habits at the RMHS Building supported her claim of having worked 14 hours without a lunch or other breaks. She also argued that, as Mr. Vogel's research showed the fastest time for her one-way trip home was 22 minutes, her 45-minute round-trip home was feasible.

At times, Appellant did not use her badge to enter the secure area of the Castro Building.⁵ She entered its secure area with other employee(s) who had used their badge(s) to access it. She explained that, as she had carried her lunch and work material, other employees granted her access to help her. The City prohibited such access and had posted its prohibition at the Castro Building's entry to its secure area. (Ex. 10). It also instructed employees of this prohibition through its Cybersecurity Awareness Training, which Appellant completed on December 29, 2017, and through notices via emails dated September 23, 2016 and May 2, 2017. (Ex. 11).

In her Interview, Appellant defended against this allegation by claiming ignorance of it and at hearing testified that "now" she understood it and would be compliant henceforth. Some witnesses testified that employees occasionally violated this prohibition at the Castro Building, or frequently, per Mr. Doyle. The Agency did not state that it has disciplined employees for this infraction before or that it intends to do so in the future. It evidently enforced this prohibition exclusively against Appellant to supplement its discipline of her. Appellant also defended against this allegation by claiming that the Agency did not discipline Jay Morein, DHS's CFO, who also violated this prohibition by granting her and Mr. Sykes access with him, and it therefore discriminated against her due to her national origin/race.

On February 15, 2018, the Agency issued to Appellant a Notice of Contemplation of Disciplinary Action. On February 22, the Agency and Appellant had a contemplation of discipline meeting. Appellant responded to the Agency's allegations with explanations for them and by alleging that its disciplinary process against her for alleged minor violations was a pretext to discriminate against her. The Agency then hired Mr. Vogel to further investigate its allegations against Appellant and her discrimination claim. Based on his investigation results, the Agency withdrew its Notice of Contemplation and on April 3, issued to Appellant a revised Notice of Contemplation. On April 11, the Parties held a second contemplation of discipline meeting at which Appellant defended herself similarly. After considering the circumstances, on April 16, 2018, the Agency dismissed Appellant. On April 30, 2018, Appellant filed this timely appeal.

IV. ANALYSIS

A. Jurisdiction and Review

The Career Service Hearing Office has jurisdiction of this direct appeal of a dismissal pursuant to CSR 19-20 A.1.a. The Hearing Officer is required to conduct a *de novo* review, meaning to consider all of the evidence as though no previous action had been taken. Turner v. Rossmiller, 532 P.2d 751, 754-5 (Colo.App. 1975); CSR 19-55 A.

B. Burden and Standard of Proof

The Agency retains the burden of proof, by a preponderance of the evidence, throughout the case to prove that Appellant violated CSRs 16-29 D, G, R, and T, and to prove that its dismissal of her was within a reasonable range of alternatives available to it. CSR 19-55 A.

⁵ The Hearing Officer disregards the Agency's evidence alleging Appellant's badging issues at the RMHS Building as a basis for discipline as it did not include such evidence in its disciplinary letters.

C. Career Service Rule Violations

CSR 16-29 states in relevant part:

- D. Any act of dishonesty, which may include, but is not limited to, lying, or improperly altering or falsifying records, examination answers, or work hours.
- ...
- G. 1. Failing to meet established standards of performance including either qualitative or quantitative standards. When citing this subsection, a department or agency must describe the specific standard(s) the employee has failed to meet, such as standards in the employee's individual goals or in a Performance Improvement Plan (PIP). (Revised May 12, 2017; Rule Revision Memo 26D)
- ...
- 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.
- T. Conduct which is or could foreseeably:
 - 1. Be prejudicial to the good order and effectiveness of the department or agency;
 - 2. Bring disrepute on or compromises the integrity of the City; or
 - 3. Be unbecoming of a City Employee.

1. CSR 16-29 D. – Dishonesty

The Agency claimed that Appellant violated this Rule by lying: (1) in false time records, (2) in a false mileage reimbursement claim, (3) about her presence at work, (4) to obtain better parking privileges, and (5) in her defense during the disciplinary process.

More specifically the Agency claimed that Appellant was dishonest in her claims that: (1) on December 6, 2017, Mr. Baker had assigned her work at the Castro Building, causing her delay to the RMHS Building; (2) on January 17, 2018, she traveled home and returned to the RMHS Building for a board meeting, but then left and tried to attend it by telephone, and was entitled to mileage reimbursement therefor; (3) Mr. Sykes commented on her absence from a meeting that she need not have attended rather than on the mandatory January 17, RMHS board meeting; (4) on January 17, she worked 11 hours without interruption; (5) on March 15, 2017, she worked 14 hours without interruption; (6) the Agency did not require her to attend the RMHS board meetings; (7) she was ignorant of the City mandate to use her employee badge to access the secure area of its buildings; and (8) she had parked at the bottom level of the Garage. At the hearing, Appellant testified that she made these representations truthfully to the best of her knowledge and did not intentionally mislead anyone.

The Hearing Officer first addresses the allegations which the Agency failed to prove or are unavailable to support its dismissal of Appellant. Appellant misconstrued the Agency's allegation that she lied about her parking privileges. It was not where she had parked, but whether she lied about where she had been parking. Regardless, when Ms. Counts had inquired of Appellant, "Where do you currently park in the garage?" she herself restricted Appellant's answer to her question with the qualification "in the garage?" In responding, "Anywhere the green pass gets you," Appellant accurately stated her contractual parking privileges in the

Garage, which she wanted to modify. Her answer also correlated with her claim of then that, due to her back injury, her bottom level parking was problematic for her. But Ms. Counts did not factor in her qualification to her question when she analyzed Appellant's answer to it. Thus, through an inapposite analysis,⁶ she found Appellant dishonest when in fact Appellant responded correctly. Therefore, the Agency did not prove that Appellant was dishonest in her response to Ms. Counts's question about her parking location.

On the "piggybacking" issue, the Agency should enforce its discipline uniformly for it to be sustained. See In re Rodriguez, CSA 12-10, 13 (10/22/10), citing In re Norman-Curry, CSA 28-07 & 50-08, 5 (2/27/09). Since the Agency enforced this prohibition exclusively against Appellant, the Hearing Officer does not sustain it or consider it as support for its dismissal of her.

The Agency tried to prove its allegation, that Appellant did not work 11 hours on January 17, 2018 at the RMHS Building, with circumstantial evidence. It presented evidence of Appellant's significantly relaxed work habits at the Castro Building. As Appellant claimed that she arrived at the RMHS Building at 6:15 to 6:30 a.m., it showed her need to clear two different levels of security before the security staff arrived at 8:00 a.m. However, Appellant plausibly explained her different work habits at the RMHS Building sufficiently to stalemate the Agency's evidence. Thus, the Agency failed to prove by a preponderance of the evidence that Appellant did not work 11 hours on January 17, 2018 and falsified her time records for it.

Next, the Hearing Officer addresses the Agency's other allegations, which it proved by a preponderance of the evidence. First, on the piggybacking issue, that the Hearing Officer deemed a violation of this prohibition unavailable for discipline is distinct from Appellant's claim to have been ignorant of it. The weight of the evidence shows that she could not have been ignorant of it. Therefore, Appellant's defense on this basis was dishonest.

The Hearing Officer concludes that Appellant fabricated an excuse to hide her late arrival at the RMHS Building on December 6, 2017. She missed the training which started at 8:30, according to Mr. Sykes who attended it. She excused her absence in her texts to Mr. Sykes, at 7:58 a.m., "Im running late as I had to stop by DHS but I'll be there!" and at 11:57 a.m., "Sorry about earlier this morning. Rob had me working on some bkd stuff so I ran into my office here instead..." (Ex. K). However, Mr. Baker testified that he had not required Appellant at the Castro Building on that day, and Ms. Counts testified that the Agency had no record of her working there then. Appellant tried to conform her actions of that morning to the evidence, testifying that she did not stop at the Castro Building and instead went to the RMHS Building, just not to the training. Her testimony would then coincide with Ms. Counts's and Mr. Baker's testimony and preclude Mr. Sykes's scrutiny of her late arrival at the RMHS Building. However, Appellant's text, that she already "had to stop by" the Castro Building, belied her new version of events. Clearly, Appellant just tried to conceal her late arrival at work through her texts.

The Hearing Officer concludes that Appellant did not travel home on January 17, for which she falsified her January 19 mileage reimbursement form. Appellant claimed to have made a round-trip home in the 31 minutes between 5:15 and 5:46 p.m. Mr. Vogel's research showed that the fastest one-way trip between the RMHS Building and Appellant's home along an 11.6 mile route took 22 minutes, but Appellant traveled a 14 mile route home. His research showed that the 14 mile route took 32 minutes one-way, making a round trip along this route at least 69 minutes long, upon adding about five minutes it took her to feed her dogs. She testified that she had been feeling ill all day so it was unlikely that she would have

⁶ Mr. Vogel took this tact in his report, but his initiation of the flawed analysis does not justify the result.

returned to this meeting just to leave. Also, since Mr. Sykes would be attending it and she would be excused for missing it due to illness, she had no compelling reason to return for it. Appellant's defense and testimony against this allegation are incredible and dishonest.

The Hearing Officer concludes that, on January 25, 2018, Appellant falsely told Ms. Counts that she had not missed any mandatory meeting the prior week, including the January 17 RMHS board meeting, thereby violating Expectation Rule 10. Ms. Counts testified, that during a January 16 review of Appellant's evaluation, she had confirmed Appellant's duty to attend these meetings. Appellant avoided admitting her absence by conflating the January 17 meeting with Mr. Sykes's meetings of Monday of the week of January 25, to which he had not invited her. Appellant had accessed Mr. Sykes's calendar, so she knew that he had two meetings on the current Monday, and on January 25, she asked him whether she had missed them. Significant herein is that on January 19, Appellant had submitted her false January 17 mileage claim. So, she had a motive to avoid scrutiny of her January 19 reports. She also did not confront Mr. Sykes about which specific, mandatory meeting he had falsely accused her of missing or why he had falsely accused her. Had she done so, he would have identified the January 17 meeting and Appellant would have had to disclose it to Ms. Counts. So, Appellant left well enough alone to make her false report to Ms. Counts.

The Hearing Officer concludes that, in her Interview, Appellant falsely denied her duty to attend the RMHS board meetings. Through the Expectations, Review, Evaluation, and Ms. Counts's January 16 meeting comments, the Agency had clearly notified Appellant of her duty to attend these meetings. Appellant testified that she got another copy of the Expectations from Ms. Counts to review them, alleging the Agency disciplined minorities more severely for violations of them, as it now applied them to her. She also considered them unwarranted. She had obviously reviewed the Expectations and understood them. While Appellant could not honestly deny her duty to attend the meetings, she did so anyway to avoid discipline.

On March 15, 2017, Appellant claimed to have worked 14 hours and made a 45 minute trip home to feed her dogs. As described above, Appellant's travel home exceeded 45 minutes, reducing her work hours by her travel time over 45 minutes. Appellant testified that she could have erred in the estimate of her travel time home, which would mean that she could have reported more hours than she worked. She argued that the Agency should not discipline her therefor as she obtained no benefit from the time that she reported and she was not intentionally deceptive. Nonetheless, despite Appellant qualifying her concession on this point, she dishonestly reported working 14 hours on March 15, 2017. Thus, the Agency proved Appellant's violation of this Rule by a preponderance of the evidence.

2. CSR 16-29 G. – Failure to Meet standards

The Agency claimed that Appellant violated this Rule by disregarding the City's STARS values, including accountability and ethics, from her Review and Evaluation and her duty to report meetings that she missed. Appellant defends against this allegation with her annual evaluations, where the Agency had rated her as successful in attending meetings. She also argued that she had no duty to attend the RMHS board meetings, that her attendance was voluntary, and that she never denied missing meetings.

To prove a violation of this rule, the Agency must prove (1) it established an attendance standard; (2) it clearly communicated that standard to the employee; and (3), the employee

failed to meet that standard. In re Rock, CSA 09-10, 5 (10/5/10), citing In re Mounjim, CSA 87-07, 8 (7/10/08). However, the generic STARS values are aspirational values, and as such, they do not constitute enforceable standards, In re Rodriguez, CSA 12-10, 11 (10/22/10), as they fail to provide sufficient notice of what conduct is prohibited. In re Espinoza, CSA 73-16, 7 (4/14/17). Thus, the Agency cannot prove a Rule violation where it claimed Appellant's actions violated aspirational STARS standards. *Id.*

Nevertheless, through her goals and the Expectations, the Agency advised Appellant that she was dutybound to attend the RMHS board meetings and to report her absences. Performance standards may be effectuated in the Agency's performance evaluations or its policies and procedures. In re Rodriguez, CSA 12-10, 10 (10/22/10), citing In re Routa, CSA 123-04, 3 (1/27/05). Appellant testified that Mr. Doyle did not enforce her attendance at meetings, which she claimed was voluntary. He claimed confusion as to the rationale for including her duty to attend these meetings in her Evaluation goals but nevertheless testified that he included this duty for her in them. Regardless, Ms. Counts's communication to Appellant of her duty to attend meetings and report absences succeeded Mr. Doyle's tenure, so she superseded his direction, even as Appellant interpreted it. As described above, Appellant pretended she attended the January 17 meeting and misrepresented that she had no absences to Ms. Counts. Her play proved her knowledge of and intentional breach of her duty to report her absence. Thus, the Agency proved Appellant's violation of this Rule by a preponderance of the evidence.

3. CSR 16-29 R. – Conduct that Violates Authority

The Agency argued that Appellant violated this Rule by submitting a false mileage claim for the January 17 RMHS board meeting, citing its Fiscal Accountability Rule 10.7 – Use of Personal Vehicles for City Business. Its Paragraph 5. States, "Filing a fraudulent claim for automobile mileage reimbursement shall be cause for disciplinary action which may include dismissal." The Agency's rule regarding fraudulent claims is sufficiently clear to have given Appellant reasonable notice of the prohibited conduct. See In re Black, CSA 03-14, 5 (6/9/14), citing In re Gutierrez, CSB 65-11, 2 (4/4/13). In defending against this allegation, Appellant testified that she was familiar with Rule 10.7, and that it entitled her to mileage reimbursement because she had traveled to the RMHS Building for the meeting, even though she did not attend it. However, as found above, Appellant fraudulently obtained mileage reimbursement for this meeting because she could not have traveled to it. Thus, the Agency proved Appellant's violation of this Rule by a preponderance of the evidence.

4. CSR 16-29 T. – Conduct Prejudicial

The Agency argues that Appellant violated this Rule by bringing disrepute on or compromising its credibility and integrity as Appellant misused its funds. Appellant responded with a denial of the Agency's allegations. By negatively impacting his supervisor's trust in his truthfulness, an employee negatively affected his supervisor's ability to supervise, an action prejudicial to the good order and effectiveness of the agency. In re Stone, CSA 70-07, 12 (2/25/08). Wrongdoing under this rule now includes conduct which "could foreseeably" cause harm, in addition to actual harm. In re Marez, CSA 58-16, 8 (1/26/17).

In fact, the City collects ML taxpayer funds to finance the service to its IDD clients, and the administration therefor. The Agency had requested an audit of its contract with RMHS for use of the ML funds. So, in a December 15, 2015 report, the Denver City Auditor documented Agency deficiencies in its monitoring of RMHS's expenditures, and made recommendations for it to correct them. (Ex. C). One such action was that the Agency have an auditor regularly monitor

RMHS's expenditures, for which the Agency hired Appellant. Its prior flaws in its oversight of RMHS's use of the ML funds created a need for its audit process to be beyond reproach. Thus, Appellant began a high-profile job, financed by ML funds, that demanded impeccable work to withstand likely scrutiny. Appellant's conduct had to be beyond reproach as the Agency needed to assure the City that it was holding RMHS to appropriate expenditures.

However, by submitting false documentation of hours and mileage, inventing excuses to conceal her absences and feigning ignorance of agency rules that she disregarded, Appellant negatively affected her supervisor's ability to supervise her due to her supervisor's loss of trust in her, an affect prejudicial to the Agency's good order and effectiveness. Appellant could have foreseeably harmed the City by bringing disrepute on or compromising its integrity regarding its oversight and auditing of RMHS. Certainly, her actions were unbecoming of a City employee. Thus, the Agency proved Appellant's violation of this Rule by a preponderance of the evidence.

5. Appellant's Credibility

In analyzing Appellant's credibility, the Hearing Officer also considers other evidence. First, Appellant also falsely obtained mileage reimbursement for travel to an August 8, 2017 training that she did not attend. The PIAD auditors were to attend a training at "East" which Appellant's text messages to Ms. Segura show that she did not attend, yet she obtained reimbursement for 16 miles of travel thereto. (Ex. 22 and 20). Appellant argued against the Agency's impeachment of her with this claim, that it was not theft because she committed an "honest mistake" unintentionally, and that she would have corrected it had anyone brought it to her attention. Appellant also defended her claim as not fraudulent because she did not submit it until several days after the training, implying that by then she had forgotten her absence. However, it is incredible that Appellant would have had this lapse of memory, especially since at her request, Ms. Segura even brought her the training handout.

Appellant's response to her false mileage reimbursement, like her testimony on her inaccurate time records, was that she would have corrected any inaccuracies had anyone brought them to her attention, but she did not accept direct responsibility therefor. She also dismissed her inflated hours by arguing that she got no benefit from reporting them yet she testified that she adjusted her schedule on the day after her long hours to work fewer hours.

Another extrapolation from August 8 is that Appellant arrived late for work. She did not attend the training but she did not arrive at the Castro Building until shortly before noon, with her coffee, according to Ms. Segura. The training lasted until noon but it had become irrelevant to the PIAD staff, so they returned to the Castro Building around 9:45, while Appellant was still absent. Had the staff arrived at the Castro Building at noon, Appellant would have preceded them briefly and obscured her late arrival. At hearing, Appellant complained that Ms. Segura criticized her for bringing coffee to work meanwhile ignoring her late arrival to work. Ms. Segura also testified about another morning when Appellant claimed to be offsite attending interviews, which were not scheduled until the afternoon. At hearing, Appellant testified that she did not recall where she was on these mornings. These absences impeached Appellant's claim of keeping conscientious work hours.

Appellant attempted to boost Mr. Doyle and, by contrast, discredit Mr. Baker, her and the Agency's respective witnesses. However, her opinions are not well grounded. For example, she criticized Mr. Baker for not attending RMHS board meetings compared to Mr. Doyle, who she claimed attended them with her. RMHS convened two board meetings while Appellant and Mr. Baker worked together. He attended one and missed the next one to remain at the Castro

Building with the BKD auditors in case they needed him. Mr. Doyle testified that he attended a couple of board meetings which, given his Agency tenure from June 2014 through May 2017, is at best similar to Mr. Baker. Appellant also belittled Ms. Segura for her criticism of Mr. Doyle while he was their supervisor, from March 22 through his August 8, 2016 demotion, as unwarranted as Appellant claimed that she had no issues with him. Yet during this time, other employees observed Mr. Doyle's issues that so impaired his work that he took two leaves of absence and then agreed to a demotion coupled with participation in a rehabilitation program.

In addition, Appellant accused Mr. Baker⁷ and Ms. Segura of lying in their testimony that she pretended to have attended the January 17 meeting, of which Ms. Counts and Mr. Sykes corroborated different parts. Appellant effectively accused these four employees of having concocted a conspiracy to discipline her. Appellant's allegation is illogical, and thus incredible, since the Agency would not have reacted to her absence from the meeting had she merely admitted to having missed it due to illness. Last, although Appellant testified that she parked in the street rather than the Castro Garage, she strategically omitted stating that she parked in the visitor area, which the Agency discouraged, and admitted it only on cross-examination.

Thus, Appellant's defenses against her discipline included dishonest, incomplete, or inapplicable responses intended to shield her misconduct. And her perception, or at least her testimony, of events was sufficiently partisan that it also debilitated her credibility.

V. DEGREE OF DISCIPLINE

Appellant also defended against the Agency's discipline of her by claiming that it failed to implement the progressive discipline that is contemplated by the CSRs.

16-41 Purpose of Discipline:

The purpose of discipline is to correct inappropriate behavior or performance, if possible. The type and severity of discipline depends on the gravity of the offense. The degree of discipline shall be reasonably related to the seriousness of the offense and take into consideration the employee's past record. The appointing authority shall impose the type and amount of discipline he or she believes is needed to correct the situation and achieve the desired behavior or performance.

1. **Seriousness of the proven offense**

Various Career Service cases address an Agency's dismissal of an employee that are instructive herein. First, honest timekeeping is an essential function for all Career Service employees, as it is the promise to provide a valuable service in exchange for a substantial portion of each taxpayer dollar. In re Marez, CSA 58-16, 8 (1/26/17). Lying during a disciplinary proceeding is especially egregious, as it undercuts the agency's efforts to seek the truth in important matters involving employment rules and the rights of employees, and weakens the ability of an agency to place its trust in the statements of its employee. In re Duran, CSA 10-10, 10 (10/1/10), *citing* In re Galindo, CSA 39-08, 10 (9/5/08). An employee's false accounting of an incident, alone, was sufficiently severe to merit termination, since the dishonesty extended to the Agency's official investigation of it, at a substantial cost of Agency resources. In re Gomez,

⁷ Appellant alleged that Mr. Baker retaliated against her because she complained to Ms. Counts about him, about which complaint he testified he was ignorant as Ms. Counts did not advise him of it.

CSA 02-12, 8 (5/14/12). Appellant's dishonesty, failure to acknowledge any wrongdoing, and agency's loss of trust in appellant's ability to complete minimal-oversight duties justified termination, despite appellant's single prior minor discipline. *Id.*, at 8-9.

But for Appellant's dishonesty, her initial misconduct was problematic but, in and of itself, not excessive. However, and despite the unproven allegations described above, her reaction to the Agency's disciplinary process undermined its confidence in her, rendering untenable its continued employment of her. Appellant denied her misconduct, refused to take adequate responsibility for it, and persisted in incredible justifications for it. At best, Appellant could only acknowledge that she could have erred but, if so, she did not do so intentionally and hence, did not commit any violation. Appellant's lax standard of conduct, which she did not apply to her auditees, was unbecoming of an auditor. Her defensive actions caused the Agency to finance an investigation, which largely documented her misconduct. As described above, it needed to have full confidence in her since she was minimally-overseen at RMHS. Yet Appellant failed to provide the Agency any basis on which it could regain its trust in her for this sensitive position. Per the above-cited caselaw, Appellant's misconduct was egregious.

2. Prior Record

Appellant had no prior discipline.⁸

3. Likelihood of Reform

Appellant did not provide any evidence that she will reform, given her standard of conduct, and she refused to accept adequate responsibility for her misconduct. See In re Carter, CSA 87-09, 9 (2/17/10). (Discipline less than dismissal would have been unlikely to correct the misconduct where appellant persistently lied about it, then attempted to subvert the investigation into it.)

VI. CONCLUSION

Considering the evidence, the Hearing Officer concludes that the Agency's dismissal of Appellant was appropriate as, irrespective of her record of no prior discipline, (1) it comports with CSR 16-41, is properly fashioned to address inappropriate behavior, and is reasonably related to the seriousness of Appellant's conduct; and (2) the record reflected a sufficient, reasonable, and articulated justification for it, it is within range of alternatives available to a reasonable and prudent administrator, and it is not clearly excessive. See In re Romero, CSB 28-16A, 2 (6/15/17); In re Redacted, CSB 31-13A, 1-2 (8/8/14).

VII. ORDER

Accordingly, the Hearing Officer AFFIRMS the Agency's dismissal of Appellant.

DONE November 29, 2018.



Federico Alvarez
Career Service Hearing Officer

⁸ The City began disciplinary proceedings against Appellant in 2012 but it did discipline her and therefore, Appellant has no discipline, as defined by CSR 19-20 A., available for consideration by the Agency herein.