

**CAREER SERVICE BOARD, CITY AND COUNTY OF DENVER, STATE OF COLORADO**

**Appeal No. 39-12**

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**IN THE MATTER OF THE APPEAL OF:**

**VERONICA SERNA, Appellant,**

**vs.**

**DEPARTMENT OF HUMAN SERVICES,  
and the City and County of Denver, a municipal corporation, Agency.**

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**DECISION AND ORDER**

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Veronica Serna was a Case Management Supervisor in the Family and Adult Services unit within the Department of Human Services. Her duties were to supervise and evaluate the work of employees who receive and process applications for public assistance. State law requires all food stamp applications to be processed within 30 days of their application. Pursuant to the terms of a stipulated settlement agreement, the state and its administering local agencies were required to maintain a 95% timeliness rate in the processing of food stamp applications for the six-month period ending September 30, 2012.

In early August, Operations Supervisor Geraldine Bettis determined that in order to meet the September 30<sup>th</sup> deadline, 45 overdue food stamp tasks needed to be researched to resolve issues affecting their ability to be processed and 97 other tasks still needed other work. Ms. Bettis scheduled two Saturday overtime sessions for August 11<sup>th</sup> and 18<sup>th</sup> in order to give staff time to complete these tasks. Ms. Bettis, who was scheduled to be on vacation from August 6 – 14, met with Ms. Serna and another Case Management Supervisor on August 3<sup>rd</sup> to discuss the work that needed to be done in her absence in order to meet the September 30<sup>th</sup> deadline. Ms. Bettis directed the two supervisors to give top priority to researching the overdue food stamp tasks by August 17<sup>th</sup> and to then submit their list of researched cases to the administrator so the overtime teams could close the applications during their final overtime session. She also instructed both supervisors to assign overdue tasks to their teams, and keep up with the ongoing caseload. Ms. Bettis later e-mailed the supervisors, repeating her instructions and providing a list of overdue and upcoming tasks.

Upon her return on August 15<sup>th</sup>, Ms. Bettis discovered that the tasks she assigned on August 3<sup>rd</sup> had not been completed. She met with the supervisors to discuss the incomplete work and formulate a plan to finish the tasks. Ms. Bettis personally completed the research on the overdue tasks in about 4 hours. The Agency as a whole did not meet the 95% timeliness rate for processing food stamp applications for the period ending on September 30, 2012. The Agency demoted Ms. Serna from Case Management Supervisor to Case Management Coordinator. Ms. Serna appealed her demotion to a hearing officer. The hearing officer affirmed, finding that the Agency proved Ms. Serna violated Career Service Rules (CSR) § 16-60 B., Carelessness in the performance of duties and § 16-60 J., failure to do assigned work, and that the penalty of demotion was appropriate.

As an initial matter, the Board notes that Appellant's Opening Brief fails to comply with CSR 19-65 A., in that it fails to separately address each ground for appeal. Rather, her brief is a hodgepodge of inarticulate arguments that rarely tie in to any of the limited grounds for appeal set forth in CSR 19-61. The brief is also filled with asserted facts that lack any citations to the record. The Board will not search through the record to confirm factual assertions. While we would affirm this appeal regardless, we again caution parties that failure to include appropriate citations to the record may be fatal to an appeal. *See In re Paz*, CSA 07-09A ("It is not the career service board's responsibility to sift through the record looking for evidence which may support or refute an argument made on appeal.").

Ms. Serna asserts as the first ground for appeal in her petition for review that the hearing officer erroneously interpreted "CSA 16-60(A), Carelessness of Duty." The Board assumes that Ms. Serna intended to cite CSR § 16-60 B, rather than § 16-60 A. Regardless, the Board finds Ms. Serna abandoned this ground for appeal when she failed to argue in her Opening Brief how the rule was misinterpreted and instead focused on whether the evidence was sufficient to sustain that violation. *See In re Roybal*, CSA 60-11A. (a ground for appeal raised in the petition for review but not argued in the opening brief is deemed abandoned). We likewise deem abandoned Ms. Serna's assertion that we have jurisdiction to consider her appeal based on new and material evidence because she not only failed to attach the affidavit required by CSR 19-62 D. but also failed to address that argument in her brief.

Ms. Serna also appealed on the grounds that the appointing authority's failure to consider her prior performance evaluation ratings as an accurate assessment of her actual performance constitutes a policy setting precedent. However, Ms. Serna failed to address this argument in her brief<sup>1</sup> and we therefore deem that she has abandoned that ground for

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<sup>1</sup> The only references in the Opening Brief to Ms. Serna's prior performance evaluations are contained in the first paragraph where she notes, without citations to the record, that "there was nothing submitted by the Agency documenting short comings (sic) in Appellant's performance reviews for the period in question," and that prior to the incident in question she had received excellent reviews. (Opening Brief, p. 1) Ms. Serna fails to address what consideration the appointing authority gave to her prior performance evaluations, much less how it constitutes a policy setting precedent supporting a reversal of the hearing officer's decision.

appeal. We do, however, take a brief moment to reject her argument (not tied to any specific grounds for appeal) that the Agency was obligated to place Ms. Serna on a Performance Improvement Plan (PIP) prior to disciplining her for performance issues. The PIP is a tool available to management to supplement an employee's Performance Enhancement Program (PEP) and to monitor improvement. It is not a prerequisite to disciplinary action for failure to perform assigned tasks.

In her petition for review, Ms. Serna contends that there was insufficient evidence to support the hearing officer's decision. In order for the Board to overturn a hearing officer's decision based on insufficient evidence, it must find that the decision was "clearly erroneous." CSR 19-61 D. A factual finding is clearly erroneous when it is unsupported by substantial evidence in the record considered as a whole; that is, where the factual finding has no support in the record. *In re Purdy*, CSA 67-11A (CSB 4/4/13). In her petition for review, Ms. Serna states as the sole factual basis supporting this ground for appeal the following: "The Hearing Officer held that the tasks assigned to complete the past due task and the current tasks were the sole responsibility of the Appellant when she was only on e (sic) of the supervisors working on the same tasks and not in charge." (Petition for Review, p. 1) In fact, the hearing officer made no such finding. Moreover, Ms. Serna abandoned this particular argument by not addressing it in her Opening Brief. Rather, she appears to argue almost exclusively that the evidence was insufficient to prove that the tasks assigned to her could reasonably be expected to be completed within the timeframe required. The hearing officer expressly found otherwise and such finding was supported by evidence in the record.

We also reject on several grounds Ms. Serna's argument that the discipline imposed was excessive. Not only did Ms. Serna fail to correlate this argument with any of the limited grounds for appeal set forth in CSR 19-61, she failed to raise this issue in her petition for review. Even if we overlooked these procedural errors, we would find that there was more than sufficient evidence in the record to justify the penalty of demotion.

Finally, the Board feels compelled to point out what appears to be an erroneous interpretation of CSR § 16-60 A. (neglect of duty) by the hearing officer in her decision. The Board recognizes that this issue was not raised by the parties. However, because it appears that the misinterpretation may be attributable to language from a prior decision by the Board, this clarification may help avoid future error in career service appeals. In the decision and order, the hearing officer initially stated correctly that "neglect of duty" is established by proof that an employee failed to perform a duty which the employee knew he or she was expected to perform. (Decision, p. 5, citing *In re Compos*, CSA 56-08A (CSB 6/18/09). Nevertheless, the hearing officer then concluded that because Ms. Serna performed approximately one-quarter of the tasks assigned to her by Ms. Bettis, the evidence did not establish that she "utterly failed to perform her duty" to research those tasks in violation of CSR 16-60 A. (Decision, p. 5)

While the hearing officer did not cite to *In re Gutierrez*, CSA 65-11 (CSB 4/4/13) as authority for this conclusion, the Board did use the phrase "utterly failed to perform [a] duty" in the Gutierrez decision. We did so, however, in the context of describing how the

facts in the record justified sustaining a violation of CSR 16-60 A. in that particular case. *Id.* at p. 3 (“The record reflects that a reasonable duty was communicated to Gutierrez and that he utterly failed to perform that duty. That amounts to a violation of 16-60 A”). In fact, the Board added a footnote to that language stating that this rule is violated “where an employee neglects to perform a job duty which the employee knows he or she is supposed to perform. *Id.* at n. 1, citing *In re Compos, id.* To be clear, the Board reiterates here that the correct standard for determining whether CSR 16-60 A. has been violated is set forth in *In re Compos*, and that standard does not include a requirement that the employee “utterly” neglected to perform a duty.

SO ORDERED by the Board on October 17, 2013, and documented this 21<sup>st</sup> day of February, 2014.

BY THE BOARD:

  
Chairperson  
*Colleen M. Rea*

**Board Members Concurring:**

**Derrick Fuller**

**Bob Nogueira**