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

Appeal No. 72-04

DECISION

IN THE MATTER OF THE APPEAL OF:

MARGARET TAFOYA, Appellant,

vs.

Denver County Court, Agency
and the City and County of Denver, a municipal corporation.

I. INTRODUCTION

Ms. Margaret Tafoya (Appellant) appeals her termination from employment with the Denver County Court (Agency), on May 13, 2004, for violation of Career Service Rules. She filed her appeal on May 20, 2004. A hearing concerning the appeal was held on September 21, 2004 before Hearing Officer Bruce A. Plotkin.

The Agency was represented by Christopher M.A. Lujan, Esq., with Mr. Ron Trujillo serving as the Agency's advisory witness. The Appellant was represented by Barry D. Roseman, Esq.

Agency exhibits numbered 1, 3, 4, 6-8, and 12-15 were admitted without objection. Agency exhibits numbered 9-11 and 16 were admitted over objection. Agency exhibit 2 was withdrawn, while number 5 was denied. The Appellant's exhibits A-D were admitted without objection.

The Agency presented the following witnesses: Ms. Kay Wise; Ms. Julia Johnson; Mr. Ed Fleith; Ms. Suzanne Razook; Ms. Sue Stover; Mr. Ron Trujillo; and the Appellant. The Appellant testified on her own behalf and also presented witnesses Ms. Melinda Aguirre, and Mr. Ron Hackett.

II. ISSUES

The following issues were presented for appeal:

A. Whether the Appellant violated Career Service Rules (CSR) §§16-50 A. 1), 7), 8), 10), 20), and 16-51 A. 2), 4), 10), and 11).

B. If the Appellant violated any of these rules, whether termination of the Appellant was reasonably related to the seriousness of the offense(s) in light of the Appellant's past record.

III. FINDINGS AND ANALYSIS

A. Background

The Appellant was an employee for the Denver County Court (Court) as an Administrative Support Assistant IV. She began her employment in the Court in 1984 and was employed continuously there until her termination on May 13, 2004. In her last position before her termination, the Appellant was one of four collection clerks for the Court. They were assigned to room 145 on the first floor of the City and County Building. When a defendant is sentenced to pay a fine and cannot pay immediately, he is sent to room 145 to work out a payment plan with one of the four payment clerks. Room 145 is a small room. The desks for the four collection clerks are arranged in two rows, all facing toward the entrance. There are no dividers or partitions between the work spaces and all the desks are within a few feet of the others, so all conversations between a defendant and clerk at one desk can be easily overheard by any other defendant and clerk at any other desk.

The Agency claims between March 8, 2004 and April 12, 2004, there were five separate incidents involving the Appellant, which led to its decision to terminate her. Four of the incidents occurred inside room 145, and one was in the hallway immediately outside.

1. Kay Wise (Wise), as the Appellant, is an Administrative Assistant IV in the Denver County Court, assigned to collections duties in room 145. On March 4, 2004 in room 145, Wise, whose desk was directly in front of the Appellant's desk, turned to her right, toward Ed Fleith, and announced "don't forget that I'll be off tomorrow." [Wise testimony]. The Appellant said "are you talking to everyone or just Ed?" Wise and Fleith described the Appellant's tone as sarcastic. [Wise and Fleith testimony]. Wise then answered "[n]o, Maggie, I was just telling Ed," in a tone Fleith described as sarcastic [Fleith testimony]. Four days later, Wise reported the Appellant's statement to her supervisor.

2. On March 22, 2004, Wise turned toward Fleith and made an announcement about some information she had just received concerning granting additional time for a

defendant to pay a fine. The Appellant stated "are you telling me also, or are you just talking to Ed?" Wise and Fleith again described the Appellant's tone as sarcastic.

3. The following day, March 23, 2004, a defendant, Frank Preston, entered room 145 to speak with the Appellant about useful public service time (UPS) he had been sentenced to work by the El Paso County Court. Although, the Defendant had been sentenced by El Paso County Court to work 48 hours UPS, he lived in Denver, so the court allowed him to perform his UPS requirement in Denver through the Denver County Court. Preston was assigned to work at the Association for Retarded Citizens, or ARC. On March 23, Preston was panicked because he believed he had completed his 48 hours, but had been credited for only 47.25 by ARC, and he was to report to the El Paso County Court that day. In Preston's presence, the Appellant called the ARC manager to inquire about Preston's UPS hours. The Agency states the manager later called the Appellant's supervisor, Ron Trujillo, to complain about the following rude behavior by the Appellant.

> You asked in a demanding tone to know who the manager was.
> When the manager, Julia Johnson inquired as to whom she was speaking, you told her you didn't like her tone and you did not appreciate the way she was talking to you.
> You demanded to speak to her superior. She informed you that she is the manager and she answers to a board of directors.
> You demanded to have contact information for the board of directors.
> You demanded to speak with someone else.

[Exhibit 7, p.3]. All parties agree the Appellant intermittently placed the call on speakerphone when Johnson spoke, and turned off the speakerphone when the Appellant spoke. Co-workers Wise and Fleith stated they had clients at their desks during the Appellant's call. They described the Appellant's tone as rude. *Id*, [Wise, Fleith testimony]. Preston testified the Appellant was at all times polite and Johnson was profane and abusive. [Preston testimony].

4. Fleith testified that on April 6, 2004, the Appellant, who is Hispanic, was outside room 145 talking with a city employee who is Black/African American. As Fleith passed by, he saw the Appellant point toward him and refer to him as "that white boy that works across from me." Fleith described the statement as offensive and discriminatory. [Exhibit 7, p.4 and Fleith testimony]. Fleith reported the alleged incident to Trujillo three days later. *Id.*

5. According to Wise, on April 5, 2004, she overheard the Appellant talking on the phone. The Appellant indicated she wanted to record office conversations in order to know what was said about her during her breaks or lunch. [Exhibit 7, p.4].

B. Jurisdiction

Jurisdiction was not challenged at hearing. The Hearing Officer finds the subject of termination is properly before him under the Career Service Rules. The jurisdictional filing dates were properly met by the parties.

C. Career Service Rules Violations

1. CSR 16-50 A. 1) Gross negligence or willful neglect of duty.

"Gross negligence", under CSR 16-50 A. 1), means flagrant or beyond all allowance, or showing an utter lack of responsibility. In Re Keegan, 69-03, In Re Daneshpour, 88-03, p.10. "Willful neglect of duty," under 16-50 A. 1) transcends any form of negligence and involves conscious or deliberate acts. In Re Keegan, 69-03.

The Agency offered the following evidence in support of its contention that the Appellant violated CSR 16-50 A. 1). Suzanne Razook (Razook) is the Human Resource Manager for the Denver County Court. Sue Stover (Stover) was the Appellant's second-level supervisor, and Ron Trujillo (Trujillo) was the Appellant's immediate supervisor. Razook, Stover and Trujillo made the decision to terminate the Appellant. Razook testified the Appellant had signed a code of conduct, exhibit 12, which included an acknowledgement of her obligation not to disclose confidential information. [Exhibit 13, p.2]. Razook stated when the Appellant placed her telephone call with Julia Johnson on the speakerphone she violated the confidentiality and privacy of a client and privacy of her co-workers pursuant to that code and therefore, "was negligent in placing her (Johnson) on the speakerphone. "[Razook testimony]. Wise and Fleith stated they both had clients at their desks when the Appellant placed her call with Johnson on the speakerphone. [Wise and Fleith testimony]. In contrast, Razook admitted there is no rule against the use of a speakerphone. [Razook cross-examination]. She also admitted it is likely others in the room could overhear at least some of the Appellant's conversation even without the speakerphone. *Id.*

The Appellant admitted she intermittently placed Johnson on the speakerphone during their telephone conversation. [Appellant testimony]. She denied being rude and insisted the Johnson was rude to her. Preston supported the Appellant's claim that she was polite and Johnson was rude and uncontrolled. [Exhibit 7, p.3 and Preston testimony]. Even if Johnson was rude to the Appellant, the Agency requirements for courtesy in customer service dictate the Appellant respond calmly or refer the person to a supervisor. [Exhibit 7].

The Appellant also claims she placed Johnson on the speakerphone because she needed witnesses to Johnson's rudeness in order to protect her (the Appellant) from her supervisor, Ron Trujillo. The Appellant believes Trujillo has picked on her repeatedly, falsely accusing her of rudeness toward others, in an attempt to terminate her. [Appellant testimony]. The testimony of Melinda Aguirre supported the Appellant's claim that Trujillo may have a hidden agenda against her. Aguirre is a former employee

of the Denver County Court and was under Trujillo's supervision. Aguirre stated during a lunch with Trujillo, Trujillo told her the Appellant was one of two employees he was going to have terminated. [Aguirre testimony]. She stated she reported the statement to two supervisors, Brigitte Juarez, and Nora Hawkins, but does not know if anything came of it. *Id.* Aguirre appeared to be truthful, and her testimony was not rebutted by Trujillo.

The Hearing Officer finds the Appellant's claim - that she needed to place Johnson on the speakerphone in order to protect herself against Trujillo falsely accusing her of abusing clients - is not relevant to the charge of gross negligence. It was Johnson, Wise and Fleith who approached Trujillo about the incident. Trujillo was not present, so any false accusation would originate from the three reporting parties and not from Trujillo. Nonetheless, the Hearing Officer finds the Agency claim deficient for the following reasons.

The layout of room 145 is cramped. [Exhibit B]. Four staff plus their clients are all within a few feet of each other, without partitions. It is unlikely there is much privacy of conversation even without the use of a speakerphone. It is even less likely confidentiality is a paramount concern under such circumstances. Certainly the Appellant's use of a speakerphone under such crowded circumstances was a nuisance to others in the room, and aggravated the already-limited privacy of the environment. Nonetheless, the Agency's claim that placing Johnson on speakerphone was a breach of confidentiality and privacy belies the reality of the physical environment in room 145. There simply is little or no confidentiality or privacy to begin with; thus, the Appellant's action in placing Johnson on the speakerphone, was not beyond all allowance, or showing an utter lack of responsibility in failing to keep her conversation with Johnson private, as alleged by the Agency. The Hearing Officer concludes the Agency fails to meet its burden to prove the Appellant violated CSR 16-50 A. 1) by a preponderance of the evidence.

2. CSR 16-50 A. 7) <u>Refusing to comply with the orders of an authorized supervisor....</u>

Previous to this case, the Agency investigated alleged wrongdoing by the Appellant in 2003. Based on its investigation, the Agency decided to take no action, and therefore notified the Appellant by letter, dated February 4, 2004, of its decision not to pursue discipline. After stating the Agency decided not to pursue any action, the letter continued:

> However, we remind you that you must conduct yourself at all times in a professional and courteous manner. It is important to treat all clients of this Agency with the utmost courtesy and respect. Even though we are unable to substantiate this citizen complaint regarding your discourtesy and impolite manner, this complaint is very similar to previous client complaints regarding your behavior. Please keep in mind that the substantiation of future client complaints regarding your discourteous and/or impolite manner may subject you to discipline up to and including dismissal.

intimidating and uncomfortable to Wise and Fleith, however neither Wise nor Fleith used the word "intimidating" to describe the Appellant's words, nor did they give the Hearing Officer any impression of being intimidated by the Appellant on either occasion. Wise only said the Appellant was sarcastic, [Wise testimony] while Fleith described his reaction to the Appellant as angry. [Fleith testimony]. The Appellant testified her questions to Wise on March 4, and 22 were polite and not sarcastic. [Appellant testimony].

It is evident the Appellant does not get along with Wise and Fleith, and Wise and Fleith do not like the Appellant. Wise and Fleith spoke with distain when describing the Appellant. They blame the Appellant's sarcasm for the tense atmosphere in the collections office on March 4 and 22. The Hearing Officer agrees the Appellant uses poor judgment in her humor. The comment "are you talking to everyone or just Ed?" was not innocent. It was sarcastic. The issue here is, given the Appellant is sarcastic and uses poor judgment in her interpersonal work relationships, do her sarcasm and poor judgment rise to the level of violating CSR 16-50 A. 8)? For two reasons, the Hearing Officer concludes they do not. First, the Hearing Officer finds the Appellant's comments on March 4 and 22, even if viewed as sarcastic, as the Agency claims, do not rise to the level of violating CSR 16-50 A. 8) as the prior cases indicate, above. Secondly, Wise and Fleith are not completely innocent victims of the dysfunctional workplace atmosphere which gave rise to the Agency's allegations against the Appellant. Wise admitted she was disciplined twice for incidents involving the Appellant, including a racial slur. [Wise, testimony]. Fleith has been sarcastic and demeaning toward the Appellant. At a March 2004 meeting, when the Appellant called for more cooperation between employees, Fleith sniffed "practice what you preach." When the Appellant made her sarcastic comment on March 4, Wise's taunting and sarcastic response "[n]o, Maggie, I was just telling Ed," belies Wise feeling threatened, intimidated or abused. Since Wise and Fleith had some part in creating and maintaining the hostile atmosphere in the collections office, they may not claim they were its victims. For these reasons, the Hearing Officer concludes the Agency fails to prove the Appellant violated CSR 16-50 A. 8) by a preponderance of the evidence.

> 4. CSR 16-50 A. 10) Discrimination or harassment of any employee or officer of the City and County of Denver because of race, color...[t]his includes making derogatory statements about a protected class regardless of whether the comments are made directly to a member of the protected class.

The Agency claims the evidence that the Appellant violated CSR 16-50 A. 10) was her reference to Fleith as "that white boy" on April 9, 2004. [Exhibit 7, p.4]. The Appellant denies making the statement.

Razook testified the Appellant admitted making the statement to her. The Hearing Officer finds Razook's testimony on this point credible and unimpeached. Razook had no motive to create the Appellant's admission, and the Hearing Officer concludes the Appellant made the "white boy" statement by a preponderance of the evidence.

CSR 16-50 A.10) contains three separate activities which are proscribed by the rule: discrimination, harassment, and derogatory statements. The rule also requires one of

those proscribed activities be made against a person who is a member of a protected class either as to race, color, religion, national origin, sex, age, political affiliation, sexual orientation, or disability. Fleith, as a member of the Caucasian race, qualifies for protection from the three forms of conduct prohibited by the rule. *See, e.g.* Vitt v. City of Cincinnati, 250 F. Supp. 2d 885 (D. Ohio, 2002).

Other than the "white boy" statement itself, the Agency offered no evidence of discrimination by the Appellant against Fleith; nor did the Agency present any evidence of harassment due to the statement. The remaining inquiry is whether the Appellant's "white boy" reference constitutes "derogatory statements about a protected class", under the circumstances of the case.

Fleith testified the statement "came across as racist because of the way it was said", without elaborating. He did not indicate there was any incident other than the single statement by the Appellant that was derogatory based on race or color. It is noteworthy that Fleith freely admits he refers to himself in front of others, including the Appellant, as "white boy."

It is important to note the plural "derogatory statements" within the rule. One statement alone, generally is not sufficient to violate Rule 16-50 A. 10) unless it is so extreme as to warrant action. *See, e.g.* Faragher v. City of Boca Raton, 524 U.S. 775, 788 (U.S., 1998)(*additional citations omitted)*. In Faragher, the Court stated it is important to distinguish between insensitive comments and discriminatory harassment. Discourtesy or rudeness should not be confused with racial harassment and "a lack of racial sensitivity does not, alone, amount to actionable harassment." *Id*, at 787. *See also* McCowan v. All Star Maint., Inc., 273 F.3d 917 (10th Cir., 2001) ("For a hostile environment claim to survive a summary judgment motion, a plaintiff must show that a rational jury could find that the workplace is permeated with discriminatory intimidation, ridicule, and insult, that is sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment").

The Appellant's isolated statement falls well short of the requirement that multiple statements or actions create an abusive working environment. Nor does it meet the exception of a single extreme incident justifying finding discrimination, or harassment The Hearing Officer concludes the Appellant's "white boy" statement was not made in violation of CSR 16-50 A. 10), therefore the Agency fails to prove the Appellant violated that rule by a preponderance of the evidence.

5. CSR 16-50 A. 20) Conduct not specifically identified herein may also be cause for dismissal.

The Agency offered no evidence to directly support its claim the Appellant was in violation of this rule. The charge is therefore dismissed.

6. CSR 16-51 A. 2) Failure to meet established standards of performance including either qualitative or quantitative standards.

The Agency maintains the Appellant violated this rule by her failure to abide by the terms in her Performance Evaluation Plan (PEP) regarding Customer Service, and in the Agency's February 4, 2003 letter, exhibit 14. [Exhibit 7, p.2].

Several Agency witnesses, including the Appellant, agreed customer service is a critical function of the Appellant. [Razook, Stover, Trujillo, Appellant testimony]. The Appellant admitted that being rude to customers of the court would constitute a violation of this rule. [Appellant testimony]. Thus, the only question to resolve is whether the Appellant violated the Customer Service Standard of her PEP in her March 23, 2004 conversation with Julia Johnson.

Wise and Fleith testified the Appellant was rude and demanding to Johnson. Trujillo, Razook and Stover testified the Appellant's rudeness to Johnson was a violation of the Customer Service Standard and the Agency's February 4 letter. The Appellant denied she was at all rude, and insisted Johnson was loud and abusive to her. Preston confirmed the Appellant's version.

Seemingly, Preston was the only neutral observer of the conversation between the Appellant and Johnson. Wise and Fleith already intensely disliked the Appellant. The Appellant's recollection of the conversation is likely to contain a version of the conversation that is laden with self-interest. Preston may have had motivation to back the Appellant at the time of the March 23 incident, but because of the delay to Preston caused by the speakerphone incident, Trujillo credited him with the missing .75 hour to complete his UPS requirement, [Trujillo testimony], so Preston thereafter had no more reason to remain beholden to the Appellant for trying to account for his missing time, than to Trujillo, who actually credited him. Preston now lives in his native Texas. While the Appellant paid for his transportation cost to attend the hearing, he received no additional payment. [Preston testimony]. The Agency claims Preston may have been coached by the Appellant on March 23, before speaking to Trujillo about the speakerphone incident, but given the short time between the incident and Preston's interview with Trujillo, and given Trujillo's crediting Preston the time he needed to comply with his UPS requirements, it seems unlikely Preston was influenced by the Appellant.

The Agency next presented the testimony of Razook and Stover for the proposition that the Appellant violated CSR 16-51 A. 2) by placing Johnson on the speakerphone during their conversation, in violation of the confidentiality code contained in exhibit 13, p.2. [Razook testimony]. That argument fails for two reasons. First, there was no testimony that any part of the conversation contained confidential information, as is required by the code. Indeed the code states confidential information includes "information on pending cases that are not already a matter of public record..." As Preston had already been sentenced, his record was public information. Second, it has already been established that there is virtually nothing in room 145 that can be

confidential, given the close proximity of the desks. Placing Johnson on the speakerphone demonstrated the Appellant's continuing poor decisions, and fueled the dysfunction in the collections office, but did not breach confidentiality when there was none. Thus, the Agency fails to prove the Appellant violated CSR 16-51 A. 2) by a preponderance of the evidence.

7. CSR 16-51 A. 4) Failure to maintain satisfactory relationships with coworkers, other City and County employees, or the public.

The Agency's evidence in support of discipline against the Appellant for violating this rule included the same evidence as cited, above, for its contention the Appellant violated CSR 16-50 A. 8), threatening, fighting with, intimidating or abusing employees or officers of the City and County of Denver. The Appellant admits making the "are you talking only to Ed" statements of March 4 and 22, but denies the comments were in any way sarcastic. The Hearing Officer has already found the Appellant's intent was nothing other than sarcastic, in part due to Wise's sarcastic reply. In addition, the Appellant's demeanor in her hearing made clear that she should have the last word. She was defiant in how she answered questions and insistent on finishing her thoughts even after being ordered to desist as not responsive. As stated above, the Appellant was not alone in creating the unsatisfactory relationships in the collections office; however Wise's role and Fleith's role in that relationship must be judged separately. The Appellant is responsible for her share of the sorry state of the relationship between the three co-workers.

The Agency also presented the testimony of Johnson in support of its contention that the Appellant violated CSR 16-51 A. 4). Johnson stated the Appellant was rude during their March 23 conversation. Johnson admitted she raised her own voice, but only as a response to the Appellant. [Johnson testimony]. The Hearing Officer observed this witness' testy manner while testifying at hearing and concludes she was likely as much as, if not more rude than the Appellant. Johnson's rudeness, however, is irrelevant to the alleged rule violation here. The issue is whether the Appellant was rude even if in response to Johnson. The standards for court service are clear. All customers of the court must always be treated courteously and politely. [Exhibit 6, p.2, Trujillo testimony]. If a caller is rude, the Employee may hang up prematurely or request a supervisor to handle the situation. [Trujillo testimony]. The Appellant did not argue these standards. Wise and Fleith confirmed Johnson's view of the conversation, although both admitted they heard only parts of it.

Preston testified he was present during the entire telephone conversation, and at no time was the Appellant rude to Johnson. [Preston testimony]. As Preston's testimony directly contradicts the Agency's witnesses, an analysis of credibility is required.

Johnson testified inconsistently. She stated both that she never raised her voice ("that's a bald-faced lie") and that she raised her voice ("my response was in response to her"). [Johnson cross-examination] and otherwise seemed interested in making sure

the Appellant was punished for any affronts, real or perceived. Her credibility is questionable. Wise and Fleith's interest in possible revenge have already been documented, above.

Preston, at first blush, would appear to be aligned with the Appellant, as she called ARC to see about Preston's hours, and Preston stood to benefit from any increase in hours as a result of the Appellant's intervention. If Preston were grateful to the Appellant there would be some question as to his credibility. There are several reasons, however, that Preston appears not to be beholden to the Appellant. First, the Appellant was not successful in providing the .75 hours sought by Preston. Second, Preston was in a tremendous hurry to return to Colorado Springs that day to report to the court concerning his UPS, and as a result of the commotion in the Johnson phone call, was obligated to remain in the Denver County Court to give a statement to Trujillo regarding the Appellant's behavior. Third, Trujillo granted Preston the .75 hours he needed, so if Preston felt beholden to anyone, it would have been Trujillo. Fourth, despite the Agency's questioning Preston concerning any remuneration he may have received for his testimony, Preston stated there was none other than for his travel, and that he never even spoke with the Appellant since the March 23 incident. [Preston testimony]. His testimony was not rebutted. Thus Preston's testimony appears to offset the version of the events offered by Johnson, Wise and Fleith.

The Agency has proven, by a preponderance of the evidence, that the Appellant violated CSR 16-51 A. 4) as to her co-workers, but failed to prove the Appellant violated CSR 16-51 A. 4), by a preponderance of the evidence, as to Johnson.

8. CSR 16-51 A. 10) Failure to comply with the instructions of an authorized supervisor.

The Agency relies on the February 4, 2004 letter, exhibit 14, for its assertion that the Appellant violated this rule.[Stover testimony]. As stated above, the Hearing Officer finds exhibit 14 is not clearly stated as an order. For the same reasons, exhibit 14 is not an order, neither is it an instruction. As exhibit 14 was the only basis for the Agency's claim, the Agency fails to prove the Appellant violated CSR 16-51 A. 10) by a preponderance of the evidence.

11. CSR 16-51 A. 11) Conduct not specifically defined herein may also be cause for progressive discipline.

The Agency presented no evidence regarding this rule. This claim is therefore dismissed.

IV. CONCLUSION

The Agency admitted no single allegation against the Appellant would be sufficient to terminate the Appellant's employment. [Stover, Trujillo testimony]. The Hearing Officer finds the Appellant was in violation of only a portion of one of the

Agency's allegations against her. As the Agency has failed substantially to prove its case against the Appellant, what remains is to analyze the degree of discipline.

The purpose of discipline is to correct inappropriate behavior or performance. CSR 16-10. The degree of discipline depends upon the seriousness of the offense, taking into consideration the employee's past record. *Id.*

The only inappropriate behavior for which the Appellant is found in violation here is her failure to maintain satisfactory relationships with her co-workers. Under normal circumstances this violation is among the minor violations in the Career Service Rules[1]. Unfortunately, the Appellant has a long history of discipline for failure to maintain satisfactory relationships. Most recently, in May 2003, the Appellant was suspended for two weeks for, *inter alia*, failing to maintain satisfactory working relationships with co-workers and others; she was suspended for three days in May 2002 for the same thing; in 1998 she received a verbal reprimand for failing to maintain adequate reasonable communication with co-workers in another division. [Exhibit 6, p.4]. Despite this obvious pattern of poor relationships with co-workers and increasing progressive discipline, the Appellant continues to deny any responsibility. At her hearing in this matter, she argued at length as to how she was wrongly accused in each prior discipline. [Appellant testimony]. She stated Trujillo was "out to get her." *Id.* As previously stated, Aguirre's testimony corroborated the Appellant's statement. Nonetheless, the complaints against the Appellant resulting in prior discipline did not originate with Trujillo and she may not now claim the complaints were without merit as those disciplinary actions were not appealed. [Appellant testimony]. The Appellant's failure to take responsibility should be a factor in the present case.

Having considered the Agency's admission that no one violation in this case should result in termination of the Appellant's employment, the relatively minor nature of the violation itself, but also the Appellant's history of failing to maintain satisfactory relationships with co-workers and others, and her failure to change or take responsibility for her past violations, the hearing officer finds a significant suspension is warranted.

[1] By "minor" the Hearing Officer does not mean to diminish the misery caused to co-workers by the Appellant's actions. "Minor" is a term meant to convey the relative degree of the infraction when compared with other violations within the Career Service Rules such as overt threats of harm or physical fighting.

V. ORDER

The Agency's termination of the Appellant's employment on May 13, 2004 is MODIFIED. The Appellant shall serve a sixty day suspension without pay in place of termination, *nunc pro tunc* May 13, 2004. The Agency is ordered to reinstate Appellant to the classification from which she was removed, and to restore the previously-lost pay and benefits which are reinstated from this decision.

DONE this 29th day of October, 2004.

Bruce A. Plotkin
Hearing Officer
Career Service Board

S:/share/hearings/
H:/Cases/Tafoya, Margaret/

CERTIFICATE OF SERVICE

I hereby certify that I have forwarded a true and correct copy of the foregoing **DECISION,** by depositing the same in the US mails, postage prepaid, this 2nd day of November, 2004, addressed to:

Barry D. Roseman, Esq.
Attorney at Law
1120 Lincoln St., Suite 1607
Denver, CO 80203

Ms. Margaret Tafoya
3550 S. Harlan St.
Unit 16 Building 274
Denver, CO 80235

I further certify that I have forwarded a true and correct copy of the foregoing **DECISION**, by depositing the same in interoffice mail this 2nd day of November, 2004, addressed to:

Christopher M.A. Lujan, Esq.
City Attorney's Office
Litigation Section

Mr. Matthew McConville
Denver County Court