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

Appeal Nos. 140-02

FINDINGS AND ORDER

IN THE MATTER OF THE APPEAL OF:

TERRY TENNYSON, Appellant,

v.

Agency: Department of Revenue, Treasury Division, and the City and County of Denver, a municipal corporation.

INTRODUCTION

For purposes of these Findings and Order, Terry Tennyson shall be referred to as "Appellant." The Department of Revenue, Treasury Division, shall be referred to as the "Department." The City and County of Denver shall be referred to as the "City". The Rules of the Career Service Authority shall be abbreviated as "CSR" with a corresponding numerical citation.

A hearing on this appeal was held October 24 and November 13, 2002, before Robin R. Rossenfeld, Hearing Officer for the Career Service Board. Appellant was present and was represented by Cheryl Hutchison, AFSCME. The Department and City were represented by Linda Davison, Esq., Assistant City Attorney, with Steve Hutt serving as the advisory witness.

The Hearing Officer has considered the following evidence in this decision:

The following witnesses were called by and testified on behalf of the Department:

Judy Bonato, Nancy Solger, Pat A. LeClaire, Scott Sprague, Steve Hutt, Appellant

The following witnesses were called by and testified on behalf of the Appellant:

Appellant, Joyce Montabon

The following exhibits were offered and admitted into evidence on behalf of the Department:

Exhibits 1 - 12

The following exhibits were offered and admitted into evidence on behalf of the Appellant:

Exhibits G - M

The following exhibits were admitted into evidence by stipulation:

Exhibits 1-6, G- K

The following exhibits were offered but not admitted into evidence and therefore not considered in this decision:

Exhibit B

NATURE OF APPEAL

Appellant is appealing his termination from the Department for alleged violations of CSR §§16-50 A. 1), 7), 8), 13) and 20) and 16-51 A. 4)), 6) and 10). He is seeking reinstatement to his position, along with back pay and all rights and benefits attendant thereto.

ISSUES ON APPEAL

Whether the Hearing Officer has subject matter jurisdiction over this appeal?

Whether Appellant violated CSR §§16-50 A. 1), 7), 8) 13) and 20) and 16-51 A. 4), 6) and 10)?

If Appellant violated any provisions of CSR §§16-50 and 16-51, what is the appropriate sanction?

PRELIMINARY MATTERS

None.

FINDINGS OF FACT

1. During the relevant period, Appellant was employed by the Department as a Senior Auditor. He worked for the City for approximately 22 years.

2. Appellant was responsible for auditing the use tax, sales tax and occupational privilege tax for the City. He described his job as being responsible for educating the taxpayer regarding the tax laws in order to increase voluntary compliance. He was responsible for the appropriate collection of taxes. He admitted that there must be a high level of trust between the taxpayer and himself and the City.

3. Appellant testified that, in 1998, he was caught by Paula Woodward on tape for using City tags on his personal vehicle. On May 20, 1998, Appellant was issued a written reprimand for refusing to provide accountability regarding his use of the parking tags. The written reprimand also covered at least two incidents where Appellant was not doing his assigned work and problems in working with his co-workers. (*See* Exhibit 1, pp. 24-25) [1]

4. Under the Denver Municipal Code, a tax audit must be completed within a limited period of time (*i.e.*, three years after the return has been filed). If the audit is going to end after the statute of limitations will run, it is the responsibility of the auditor to have the taxpayer sign a consent form expanding the audit. If an auditor fails to do this, any monies collected from the taxpayer after the statute of limitations has run must be returned to the taxpayer.

5. One of Appellant's duties was to ensure that all deadlines are met when conducting an audit.

6. Appellant received a written reprimand on June 25, 2001, for failure to meet established standards of performance [CSR §16-51 A. 2)] and carelessness in performance of duties and responsibilities [CSR §16-51 A. 6)]. According to the written reprimand, Appellant failed to take appropriate action to obtain a validly executed "Consent Fixing Period of Limitation Upon Assessment" form within the period of assessment authorized by the Municipal Code. This resulted in a financial loss to the City of $1,071.06 (Exhibit 1, p. 28)

7. Pat LeClaire, Appellant's immediate supervisor, testified that

[1] Appellant was also disciplined twice in 1992. The Hearing Officer ruled during the hearing that these matters, which were more than five years earlier than the 1998 written reprimand and more than ten years before the incidents that make up the gravaman of this action, were not admissible.

she became very concerned about Appellant's performance when he missed these consents. She admitted that other auditors missed consents and they've been disciplined as well. She also testified that she instructed Appellant to enter his consent dates into the computer and showed him how to do this. She stated that Appellant could have set the system to have the consent date "pop-up" on the computer two weeks or a month before they were due so that he would have sufficient time to obtain the consents from the affected taxpayers.

8. According to his January 2002 Performance Enhancement Program Report ("PEPR"), Appellant was "below" expectation for the Priority I accomplishment "Timely completion of audit reports."

> Seven of the nine write-ups were not timely. Terry is aware this is a weakness and must concentrate to improve this area during his new review period.

(Exhibit L, p. 3)

The PEPR narrative then states:

> Terry received two written reprimands, each related to letting the consent period for an audit expire. In response to these, Terry implemented a new procedure and he now only issues consents with expiration dates at the end of a quarter. This allows him to monitor consents more closely. The monitoring of consents is a high priority and will be address as a separate Priority I for the next review period.

(*ibid.*, p. 4)

9. Scott Sprague, Audit Manager, Appellant's second line supervisor, became concerned with Appellant's performance in February/March 2002. According to Mr. Sprague, Appellant had the consent for the CAMAS audit signed about one month late. As a result, a refund of $43,000 (one-third of the audit) had to be returned to the taxpayer.

10. Mr. Sprague looked at the CAMAS audit itself and found other problems in its completion. Mr. Sprague told Ms. LeClaire to watch appellant's work closer because the problems with his work were deeper than just failure to complete consents.

11. Ms. LeClaire noticed that Appellant continued to abuse his break time and that he was often not at his desk. According to her, she observed Appellant for three days in April. She kept a log of the time he

spent visiting other employees at his and their desks, the time he took to move his car from parking meter to parking meter and then going to buy a latte, the time he took for his smoking breaks, and other absences form his desk. She felt that many of his performance issues were due to poor time management. She tried to think of ways to "make it better for Terry to get his work done."

12. On April 12, 2002, Ms. LeClaire a left a memo for Appellant, who was out sick that day, on his desk. In the memo, she instructed Appellant to complete a two-week plan of tasks to be performed from April 15 through April 26. She also instructed Appellant to complete a "15-minute activity" log of his activities for two weeks commencing April 15, 2002.

13. Ms. LeClaire testified that she obtained the log from a website providing ideas for better time management. She stated that she had looked for something simple and interesting, but not needing a lot of training.

14. Appellant did not complete the two-week plan or begin the activity log on April 15. Appellant admitted during the hearing that he never did the activity log despite many requests from Ms. LeClaire that he do so. He testified that the original memo was for the two weeks commencing April 15, and that once the two weeks had passed and as he was also required to submit a different log to Ms. LeClaire every Wednesday which showed the status of his cases), he did know what Ms. LeClaire was asking for nor did he feel he was required complete the (never begun) 15-minute activity log.

15. Ms. LeClaire testified that she asked for the 15-minute logs at least a dozen times. Appellant would say things like "Don't go there" and "It's already started. It's not going to stop." When she asked for the logs. She stated that she did not know what Appellant meant by this.

16. On May 29, Ms. LeClaire instructed Appellant to complete the audit write-ups of Penhall/Phoenix, KDVR-31, and Rent-A-Center by June 7, 2002. Appellant did not comply with this request, nor did he ask for any extensions to complete the audits. According to Mr. Sprague, Appellant had not completed these audits by the time of the predisciplinary meeting, more than a month later.

17. Appellant denied this and stated that the KDVR-31 audit had been completed. He testified that it was not possible to complete the Rent-A-Center audit because the taxpayer was still researching the payments and that several issues remained for the Penhall/Phoenix audit, an audit he described as "complicated." He did not explain why he did not

ask for any extensions to complete these last two audits.

18. On June 4 and again on June 6, Appellant requested a change in supervisors. Mr. Sprague offered alternatives to Appellant, but he rejected them.

19. On June 4, Ms. LeClaire noted that Appellant left his workstation at 11:20 a.m. and returned at 12:05 p.m. When he was later questioned about it, he said he had been moving his car. Ms. LeClaire questioned that it took 45 minutes to do so. Appellant was very emotional and said, "What is this? I'm sick of this."

20. Also on June 4, Appellant signed out for lunch at 12:35 p.m. and signed back in at 1:17 p.m., although Appellant wrote 1:10 p.m. Appellant is supposed to have one half hour for lunch.

21. Ms. LeClaire asked that Appellant submit the audits he worked on for the prior week as attachments to his weekly work sheets. Appellant never complied with this request.

22. Appellant received a written reprimand on June 7, 2002 for misuse of his break time, inaccuracies in and failures to make entries regarding the times he signed out for breaks and lunch, and his failure to provide information requested by his supervisor in a timely manner. (*See* Exhibit 1, pp. 13-15). At the time Appellant received the written reprimand, he told Ms. LeClaire, "Every clock is different."

23. Ms. LeClaire again asked for the 15-minute activity logs from Appellant on June 7, after she issued the written reprimand. Appellant again refused to produce it.

24. Appellant was scheduled to conduct an audit of Summit Brick on June 10, 2002. The taxpayer, whose home office is in Pueblo, had made arrangements to stay in a Denver hotel during the three-day audit. The audit was scheduled to begin at 9:00 a.m.

25. Ms. LeClaire saw Appellant leave the area after receiving the written reprimand on June 7. She did not know where he went or how long he was gone. Based upon this conduct, Ms. LeClaire decided to accompany Appellant on the audit of Summit Brick, despite the fact that it was on her scheduled day off.

26. Ms. LeClaire testified that she would occasionally accompany auditors on audits, particularly when they were complex. According to her, having another person present would help the efficiency of the audit for the taxpayer. Judy Bonato, another supervisor in the Unit,

testified that she too accompanied auditors in the field on occasion.

27. Ms. LeClaire contacted the taxpayer on June 7, at approximately 4-4:15 p.m. and was told that there would be enough room for Ms. LeClaire at the audit site. Ms. LeClaire meant to tell Appellant that she would be going along with the audit on June 7, but she was unable to find him.

28. Ms. LeClaire came directly to the office on June 10. Appellant was on the telephone when Ms. LeClaire first saw him that day. At approximately 8:30 a.m. she was able to tell Appellant that she was going to accompany him on the audit. When she told him, Appellant got very angry and said that she couldn't go with him because she had not gotten his approval to go. He also said that there was no space for her, so that she could not go.

29. According to Ms. LeClaire, Appellant was yelling at her at the time. She stated that he has previously raised his voice at her before, but that this was the most aggressive and demanding he had ever been. She was hurt by his behavior. She was also scared by the verbal attack and decided to take her own car to the audit.

30. Nancy Solger, a senior auditor, witnessed this confrontation between Appellant and Ms. LeClaire. She stated that Appellant was speaking in a loud and defiant tone. She described him as "mean and nasty," as if he were picking on Ms. LeClaire. He was highly agitated, mean, and somewhat threatening. According to Ms. Solger, Appellant was not acting professionally. On the other hand, Ms. LeClaire was acting in a professional manner. Ms. Solger said that she did not know how Ms. LeClaire was able to remain as calm as she did. Ms. Solger also testified that she had heard Appellant yell at Ms. LeClaire at other times, but never as nastily or vocally as he did on June 10.

31. Ms. LeClaire told Appellant that she had the taxpayer's permission to go on the audit. Appellant walked away from her.

32. Ms. LeClaire then went to sign out. The "locator register" is between Mr. Sprague and Ms. Bonato's offices. When she got to the locator register, she could hear Appellant yelling in Mr. Sprague's office. She stated that she could not hear what Mr. Sprague was saying to Appellant.

33. Ms. Bonato, who was in her office, testified that she could hear Appellant yelling in Mr. Sprague's office, but that she could not hear what Mr. Sprague was saying. Then, Appellant and Mr. Sprague moved closer to the door, so that Ms. Bonato could hear the conversation.

34. Ms. Bonato related that she heard Appellant state, "No, she's not trying to help me. She is trying to intimidate me." Mr. Sprague, who Ms. Bonato assumed had seen Ms. LeClaire, stated, "Pat, are you trying to intimidate Terry?" Ms. LeClaire replied, "No."

35. Mr. Sprague and Ms. LeClaire confirmed this portion of the conversation. They went on to testify that Appellant then stated he was going over to the employee medical clinic. Appellant admitted that he stated this, testifying that he was too upset to go the audit.

36. Before Appellant walked away from the sign-out area, Ms. LeClaire told him he had to go to the audit.

37. Mr. Sprague also testified that he told Appellant two to four times that he was to go to the audit and not to employee assistance.

38. Mr. Sprague testified that Appellant always claimed that someone was trying to intimidate him whenever he did not like something that was going on.[2]

39. Appellant signed out at 8:55 a.m. and returned to the office at 12:15 p.m. According to the sign-out sheet, he went to employee assistance. (Exhibit 5)

40. Appellant never went to Summit Brick for the audit on June 10.

41. When Ms. LeClaire returned from the audit on June 10, she left a note for Appellant telling him to meet her at Summit Brick at 8:00 the next morning.

42. Appellant appeared at Summit Brick at 8:30 on June 11. He demanded, in a belligerent tone, that he be given a tour of the facility prior to his beginning the audit. Ms. LeClaire told him that she had already toured the facility the day before. Appellant told her that she was being intimidating towards him and that he needed the tour. Appellant eventually took the tour with the taxpayer, which wasted, according to Ms. LeClaire, an hour and a half of her and the taxpayer's time.

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[2] Appellant testified that Ms. LeClaire was trying to intimidate him because he had signed an affidavit on behalf of Joyce Montabon, who was suing the Department in the United States District Court for the District of Colorado. Ms. LeClaire testified that she was unaware of the affidavit until Appellant told her about it in April when she asked him to do the time logs. Ms. LeClaire, Mr. Sprague and Mr. Hutt denied that this matter was brought in retaliation or to intimidate Appellant because of the affidavit. During the closing arguments, Appellant, through his representative, conceded that the instant disciplinary action was not retaliatory.

43. Appellant had another audit scheduled for June 17. Ms. LeClaire told him, on June 13, that he was to report directly to the site on June 17. Appellant told her that he was not going to the audit on June 17 because it was his last day to get his grievance for the written reprimand done. Ms. LeClaire told Appellant that she needed to get invoices from the taxpayer for the audit. Appellant told Ms. LeClaire, "The taxpayer can wait."

44. Mr. Sprague saw Appellant working on the grievance in the office on June 17 at approximately 8:20 a.m. Mr. Sprague told Appellant that he was not to be working on a grievance during working hours and instructed Appellant to leave for the audit. Mr. Sprague told Appellant to go to the audit several times. Appellant finally signed out for the audit at 8:30 a.m.

45. Appellant was given a Notice of Contemplation of Discipline on June 18, 2002. (Exhibit 2) The prediscipcinary meeting was held by Steven Hutt, Treasurer, on July 9, 2002. After the predisciplinary meeting, Mr. Hutt determined that Appellant had violated provisions of the CSR [CSR §§16-50 A. 1), 7), 8), 13) and 20) and 16-51 A. 4)), 6) and 10)] and that, based upon his statements, prior disciplinary history, and work record, dismissal was appropriate. According to Mr. Hutt:

> [...] Your flagrant and repeated insubordination and refusal to carry out your job responsibilities, and the disrespectful and abusive manner in which you have treated supervisors in this office, ... cannot be tolerated in this, or any, work environment.

(Exhibit 1, p. 5)

46. Appellant filed his appeal with the Hearing Officer in a timely manner.

DISCUSSION AND CONCLUSIONS OF LAW

Applicable Rules and Statutes

CSR Rule 16 governs discipline. CSR §16-10 sets out the purpose of the Rule:

> The purpose of discipline is to correct inappropriate behavior or performance. The type and severity of discipline depends on the gravity of the infraction. 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 or designee will impose the type and amount of discipline she/he believes is needed to correct the situation and achieve the desired behavior or performance.

The disciplinary action taken must be consistent with this rule. Disciplinary action may be taken for other inappropriate conduct not specifically identified in this rule.

CSR §16-20, Progressive Discipline, provides in relevant part:

1) In order of increasing severity, the disciplinary actions which an appointing authority or designee may take against an employee for violation of career service rules, the Charter of the City and County of Denver, or the Revised Municipal Code of the City and County of Denver include:

   a) Verbal reprimand, which must be accompanied by a notation in the supervisor's file and the agency file on the employee;

   b) Written reprimand, a copy of which shall be placed in the employee's personnel file kept at Career Service Authority;

   c) Suspension without pay, a copy of the written notice shall be placed in the employee's personnel file kept at Career Service Authority;

   d) Involuntary demotion, a copy of the written notice shall be placed in the employee's personnel file kept at Career Service Authority; and

   e) Dismissal, a copy of the written notice shall be placed in the employee's personnel file kept at Career Service Authority.

2) Wherever practicable, discipline shall be progressive. However, any measure or level of discipline may be used in any given situation as appropriate. This rule should not be interpreted to mean that progressive discipline must be taken before an employee may be dismissed.

CSR §16-50, Discipline and Termination, provides, in relevant part:

A. Causes for dismissal.

The following may be cause for dismissal of a career service employee. A lesser discipline other than dismissal may be imposed where circumstances warrant. It is impossible to identify within this rule all conduct which may be cause for discipline. Therefore, this is not an exclusive list.

1) Gross negligence or willful neglect of duty.

7) Refusing to comply with the orders of an authorized supervisor or refusing to do assigned work, which the employee is capable of performing.

8) Threatening, fighting with, intimidating, or abusing employees or officers of the City and County of Denver for any reason including but not limited to: intimidation, or retaliation against an individual who has been identified as a witness, as a party, or as a representative of any party to any hearing or investigation relating to any disciplinary procedure, or a violation of a city, state, or federal rule, regulation or law.

13) Unauthorized absence from work, including but not limited to: when the employee has requested permission to be absent and such request has been denied; leaving work before completion of scheduled shift without authorization; or taking unauthorized breaks.

20) Conduct not specifically identified herein may also be cause for dismissal.

CSR §16-51, Causes for Progressive Discipline, provides, in relevant part:

A. The following unacceptable behavior or performance may be cause for progressive discipline. Under appropriate circumstances, immediate dismissal may be warranted. Failure to correct behavior or committing additional

violations after progressive discipline has been taken may subject the employee to further discipline, up to and including dismissal from employment. It is impossible to identify within this rule all potential grounds for disciplinary action; therefore, this is not an exclusive list.

4) Failure to maintain satisfactory working relationships with co-workers, other City and County employees or the public.

6) Carelessness in performance of duties and responsibilities.

10) Failure to comply with the instructions of an authorized supervisor.

CSR §19-10 covers actions subject to appeal. It provides in relevant part:

§19-10 Actions Subject to Appeal

The following administrative actions relating to personnel matters shall be subject to appeal:

b) Actions of an appointing authority: Any action of an appointing authority resulting in dismissal, suspension, involuntary demotion, disqualification, layoff, or involuntary retirement other than retirement due to age which results in alleged violation of the Career Service Charter Provisions or Ordinance relating to the Career Service, or the Personnel Rules.

Analysis

The City Charter C5.25 (4) requires the Hearing Officer to determine the facts in this matter "de novo." This has been determined by the Courts to mean an independent fact-finding hearing considering evidence submitted at the de novo hearing and resolution of factual disputes. *Turner v. Rossmiller*, 35 Co. App. 329, 532 P.2d 751 (Colo. Ct. of App., 1975)

Because this is an appeal of a disciplinary action (termination), the Department has the burden of proof to demonstrate that its decision was within its discretion and appropriate under the circumstances.

Appellant has been charged with violating several provisions of CSR Rule 16. The first of these is he violated CSR §16-50-A. 1), "gross negligence or willful neglect of duty.

Neither "gross negligence" nor willful neglect of duty" is defined in the CSR. The Hearing Officer must look elsewhere for their definitions. They are terms well-defined in the law. Negligence does not require intent. It is commonly defined as the failure to use reasonable care or a failure to act in a reasonably prudent manner under the circumstances. *Lavine v. Clear Creek Skiing Corp.*, 557 F.2d730 (10th Cir. 1977); *Metropolitan Gas Repair Service, Inc. v. Kulik*, 621 P.2d 313 (Colo. 1980); *Rice v. Eriksen*, 476 P.2d 579 (Colo. App. 1970). Gross negligence involves a higher form of culpability than mere negligence. "Gross" in this context means flagrant or beyond all allowance, *Lee v. State Board of Dental Examiners*, 654 P.2d 839 (Colo. 1982), or showing an utter lack of responsibility. *People v. Blewitt*, 192 Colo. 483, 563 P.2d 1 (1977). Willful neglect of duty transcends any form of negligence and involves conscious or deliberate acts. *See Turner v. Lyon*, 189 Colo. 234, 539 P.2d 125 (1976); *Drake v. Albeke*, 188 Colo. 14, 532 P.2d 225 (1975).

"Gross" has been defined as "immediately obvious" or "glaringly noticeable usually because of inexcusable badness or objectionableness."[3] *Black's* defines it as"

> [G]reat; culpable. General absolute; not to be excused; flagrant; shameful; as a gross dereliction of duty; a gross injustice; gross carelessness.[4]

"Gross negligence" is defined by *Black's* as:

> The intentional failure to perform a manifest duty in reckless disregard of the consequences as affecting the life or property of another; such a gross want of care and regard for the rights of others as to justify the presumption of willfulness and wantonness. "Gross negligence is substantially higher in magnitude than simple inadvertence, but falls short of intentional wrong." (Cite omitted)[5]

In other words, "gross negligence" does not require that the Department show that Appellant intentionally acted in a wrongful manner, just that he performed his work in a manner that was more than careless or inadvertent and that the failure to perform the work was obviously unreasonable or inappropriate.

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[3] *Miriam-Webster's Collegiate Dictionary*, 10th Ed., 1993
[4] *Black's Law Dictionary*, 4th Ed., 1951
[5] *ibid.*

On the other hand, "willful neglect" implies that the wrongful conduct was intentional or conscious, not merely negligent. "Willful" is generally defined as "obstinately and often perversely self-willed; done deliberately."[6]

Black's defines "willful" as:

> Proceeding from a conscious motion of the will; voluntary. (Cite omitted)...Intending the result which actually comes to pass; designed; intentional; not accidental or involuntary...A willful act may be described as one done intentionally, knowingly, and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly, or inadvertently. (Cite omitted.)[7]

The Hearing Officer has considered the testimony offered during the hearing. Based upon all the evidence, the Hearing Officer concludes that the Department proved by a preponderance of the evidence that Appellant's work performance was either grossly negligent or willful neglect.

Appellant's performance failures from April through June 2002 are "glaringly obvious." He was not completing work that, as a very experienced auditor, was within his competency. It is clear to the Hearing Officer that his failures were intentional; Appellant was angry with Ms. LeClaire and others at the Department, and he was going out of his way not to perform his work at an acceptable level. The more they tried to accommodate him, the more Appellant misbehaved. His poor performance was willful. He violated CSR §16-50 A. 1).

Appellant was also charged with violating CSR §16-51 A. 6), carelessness in performance of duties and responsibilities. This provision differs from CSR §16-50 A. 1) in that this provision does not require that the misconduct rise to the level of either grossness or willfulness. It is clear to the Hearing Officer that Appellant was not being merely careless in his performance. He was purposely performing at an inappropriate level. Because Appellant's conduct unquestionably falls within the purviews of CSR §16-50 A. 1), the violation of CSR §16-51 A. 6) is dismissed.

Appellant is charged with violating CSR §16-50 A. 7), failure to comply with the orders of his authorized supervisor and refusing to do assigned work which he is capable of performing, and CSR §16-51 A. 10), failure to comply with the instructions of an authorized supervisor. The record is clear that Appellant refused to comply with the instructions of both

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[6] *Miriam-Webster's, op cit.*
[7] *Black's, op cit.*

Ms. LeClaire and Mr. Sprague. Appellant failed to complete the 15-minute logs despite Ms. LeClaire asking him to do so more than a dozen times. He went to employee assistance on June 10 instead of the Summit Brick audit despite explicit and repeated instructions from both Ms. LeClaire and Mr. Sprague. One week later, on June 17, he chose to work on a grievance rather than appear at an audit that morning, again contrary to the instructions of both Ms. LeClaire and Mr. Sprague. The violations of CSR §§16-50 A. 7) and 16-51 A) 4) have been established by a preponderance of the evidence.

Appellant's behavior toward Ms. LeClaire on June 10 was abusive and threatening. The independent witnesses (Ms. Bonato and Ms. Solger) confirm this conclusion. The Department proved the violation of CSR §16-50 A. 8) by a preponderance of the evidence. This inappropriate and demeaning behavior also establishes the violation of CSR §16-51 A. 4), failure to maintain a satisfactory working relationship with his co-workers.

Appellant's decision not to go to the Summit Brick audit on June 10 and to go to employee assistance instead was unauthorized. The Department established the violation of CSR §16-50 A. 13).

The violation under CSR §§16-50 A. 20) is dismissed. The Department produced evidence that established violations of specific provision of CSR §§16-50 A. and 16-51 A. This "catchall" provision is dismissed.

The last question for the Hearing Officer is the appropriate level of discipline. The Hearing Officer has reviewed Appellant's disciplinary history since 1998, the problems noted in his last PEPR, and his testimony during the hearing. It is obvious to the Hearing Officer that Appellant refuses to take any responsibility for any of the matters that constitute this disciplinary action. He blames his supervisors for his performance issues. He does not understand why it is inappropriate to yell at one's supervisor. He puts his own interests first, as demonstrated by his telling Mr. Sprague that a taxpayer could wait while he finished a grievance. The Hearing Officer is equally unimpressed by Appellant's claim that he did not have to do the 15-minute log because he did other reports for Ms. LeClaire and, most disingenuously, the two weeks Ms. LeClaire had first ordered him to do it had long since passed by the time he was disciplined. The Hearing Officer concludes that, as Mr. Hutt put it, Appellant's insubordination, refusal to carry out his job responsibilities, and the disrespectful and abusive manner in which he treated his supervisors, cannot be tolerated in any work environment. The discipline of termination is the only appropriate discipline in this case.

ORDER

Therefore, for the foregoing reasons, the Hearing Officer MODIFIES the disciplinary action as follows: The violations of CSR §§ 16-50 A. 1), 7), 8), and 13) and 16-51 A. 4) and 10) are AFFIRMED. The violations of CSR §§16-50 A. 20) and 16-51 A. 6) are DISMISSED. Appellant's termination is UPHELD. The appeal is DISMISSED with prejudice.

Dated this 26th day of December 2002.

Robin R. Rossenfeld
Hearing Officer for the
Career Service Board

CERTIFICATE OF MAILING

I hereby certify that I have forwarded a true and correct copy of the foregoing FINDINGS AND ORDER by depositing the same in the U.S. mail, this 27th day of December 2002, addressed to:

Terry Tennyson
307 S. Holy Street
Denver, CO 80246

Cheryl Hutchison
AFSCME
3401 Quebec Street, # 7500
Denver, CO 80207

I further certify that I have forwarded a true and correct copy of the foregoing FINDINGS AND ORDER by depositing the same in interoffice mail, this 27th day of December 2002, addressed to:

Linda M. Davison
Assistant City Attorney

Steve Hutt
Department of Revenue, Treasury Division

Cheryl Cohen
Manager of Revenue

Virginia Granado