

**DECISION AND ORDER**

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IN THE MATTER OF THE APPEAL OF:

**KATHY TURNER**, Appellant,

vs.

**DENVER HEALTH AND HOSPITAL AUTHORITY**, and the City and County of Denver, a municipal corporation, Agency.

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The hearing in this appeal was held on January 5, 2009 before Hearing Officer Valerie McNaughton. Appellant was present throughout the hearing, and was represented by Michael O'Malley, Esq. The Agency was represented by Susan Stamm, Esq., and Tammie Le served as its advisory witness. Having considered the evidence and arguments of the parties, the Hearing Officer makes the following findings of fact and conclusions of law, and enters the following order:

**I. STATEMENT OF THE CASE**

On October 23, 2008, Appellant Kathy Turner filed this direct appeal challenging her three-day suspension dated October 20, 2008 imposed by her employer, Denver Health and Hospital Authority (Agency). Agency Exhibits 1 – 21 were admitted by stipulation of the parties. No other exhibits were offered by either party.

**II. ISSUES**

The issues in this appeal are as follows:

- 1) Did the Agency establish by a preponderance of the evidence that Appellant's conduct justified discipline under the Career Service Rules (CSR), and
- 2) Did the Agency establish that a three-day suspension was within the range of penalties that could be imposed upon Appellant by a reasonable administrator for the violations proven under the rules?

### III. FINDINGS OF FACT

Appellant Kathy Turner is a Pharmacy Technician assigned to the Central Fill Pharmacy at the Agency's Denver Health Medical Center, and has held that position since her employment by the Agency twenty years ago. On Oct. 20, 2008, Appellant was suspended for three days for asserted violations of the Agency's attendance policy on May 9 and July 21, 2008. [Exh. 1.]

The hospital's Central Fill Pharmacy fills over one thousand prescriptions per day. It operates six days a week, using an assembly line of employees stationed at a belt that moves the bottles from the order and authorization phase to the totes headed for other hospital pharmacies. Pharmacy technicians cover four fill stations, which are divided alphabetically by patient name. The technician at Station One also serves as Belt Lead, whose function is to direct the work flow to each station. Another technician pre-packages the most frequently ordered prescriptions. One or two pharmacists check each prescription. An additional employee is assigned to multi-task every day. Two other employees perform bagging and billing once the prescriptions are checked. Given the high degree of specialization in the operation of the assembly line, temporary staffing is of little assistance to cover absences without at least a day of training.

The work model for the Central Fill Pharmacy estimates an eight- or ten-hour shift, but employees must stay late to complete all ordered prescriptions by the promised pick-up time, regardless of their specific end of shift. Staffing is sufficient to complete the work on most days, but absenteeism is considered a serious offense based on its negative effect on productivity, work stress, and, most importantly, its potential to cause medication errors because of staff fatigue.

#### 1. May 9, 2008 Absence

Appellant has been a member of the U.S. Army Reserve Corps. for the past 24 years, and now holds the rank of Master Sergeant. She was deployed for active military service from 2004 to 2006, and was given military leave from the Agency for that time. Appellant attends military training or exercises twice or more each year. On March 20, 2008, Appellant requested military leave for training in San Antonio, Texas from Sunday May 4 to Thursday May 8, 2008 based on information she received at a conference. Appellant testified that she tried to give her supervisor plenty of notice of her leave requests so the work schedule could be adjusted accordingly. Her supervisor, Pharmacy Manager Tammie Le, approved that leave request on April 14, 2008. [Exh. 11-1.] It is the Agency's policy to automatically grant military leave for training. [Exh. 20-7.]

On April 22, 2008, the Department of the Army issued the official order for the San Antonio training. That order was for five days of training to commence May 5, 2008. [Exh. 9.] Appellant received this order in her home email on April 22, and got another copy by mail a few days thereafter. She testified that she did not refer back to the order to check the dates against her leave request "because I was pretty sure I had

it right." As a result, Appellant did not notice that the five-day training would also include May 9th.

Agency Benefits Representative Connie Day handles military and other forms of leave requests for the five thousand Agency employees, in addition to benefits issues. Leave requests are governed by Agency policy # 5-106. [Exh. 20.] Under that policy, an employee is expected to submit a written request for military leave to his or her supervisor. As Benefits Representative, Ms. Day acts as the second pair of eyes for any military leave requests she receives from employees or supervisors. She reviews the request and military order if available, and sends a letter to the employee and supervisor stating the dates of the approved leave, including any travel days. The accuracy of the leave dates shown in Ms. Day's letter depends on the information submitted by the employee, unless the military order is included with the leave request. If Ms. Day also obtains the military order, she compares the two, and requests clarification from the employee about any discrepancy. Ms. Day did not send out such a letter for the May training, since she did not receive a copy of either Appellant's leave request or the training order from the military. Ms. Day always receives military deployment orders, but may not receive copies of orders for training classes.

Based on the dates stated in Appellant's leave request, Ms. Le eliminated Appellant from the May work schedule from Sunday May 4 to Thursday May 8, and scheduled her to work on May 9<sup>th</sup> at Station Two. [Exh. 13-2.] Appellant testified that she would not expect Ms. Le to correct her leave request. In accordance with pharmacy practice, Ms. Le gave Appellant a copy of the May work schedule by April 24, a week before the schedule started. Employees were expected to and did review the schedule as soon as possible to assure its accuracy and inform Ms. Le of any needed changes, in recognition of the time needed to make schedule changes. Appellant traveled to San Antonio on Sunday May 4<sup>th</sup>, and attended the training from Monday May 5<sup>th</sup> to Friday May 9<sup>th</sup>.

On May 9<sup>th</sup>, Ms. Le called Appellant's home and cell phone numbers to ask why she was not at work. Appellant took her cell phone to the San Antonio training, but did not retrieve her messages on either phone. As a result of Appellant's absence that day, a pharmacist was required to perform technician work, and Ms. Le was pulled off her supervisory and other duties to work as a tech in the morning and multi-task in the afternoon, including tearing paper for prescription bags. Ms. Le called for a backup technician from the Central Circulating pharmacy, and also called a temporary agency, both unsuccessfully. The entire staff was very tired by the end of the day.

When Appellant returned to work on Monday May 12<sup>th</sup>, Ms. Le asked her why she was not at work the previous Friday. Appellant apologized, admitted it was a mistake, and said she had meant to request military leave for May 9<sup>th</sup> in addition to the other days. Ms. Le asked for a copy of the training order. Appellant retrieved her copy from her locker and gave it to Ms. Le. Ms. Le wrote a note, "received 5/12/08", on her copy of the order. [Exh. 9-1.]

## 2. July 21, 2008 Absence

On Feb. 22, 2008, Appellant requested military leave for training from July 20 to August 2, 2008 based on her 2008 training schedule. Appellant did not submit that schedule or the military order to her supervisor, but did give her a copy of her 2009 schedule on Oct. 27, 2008. [Exh. 19.] The leave was approved on June 6, 2008. [Exh. 12-1.] In late June, the July schedule was distributed to all staff, showing that Appellant was on military leave from July 20 to the end of the month. [Exh. 15-4.]

The evening of Thursday, July 17<sup>th</sup>, Appellant opened an email sent by the Army the previous day to her home computer, which informed her that the training had been cancelled for budgetary reasons. At 3:00 pm the following day, at the start of her afternoon break, Appellant gave Ms. Le a handwritten note which stated, "Tammie, I am canceling my 2 weeks military leave for 20 Jul to 2 Aug. Kathy T." Ms. Le added her note, "Gave to me on 7/18/08 3p." [Exh. 8-1.] Ms. Le had vacation scheduled for the following week, but planned to come in on Monday morning to add Appellant back into the work schedule.

Thereafter, Appellant waited to hear from Ms. Le about the upcoming week's schedule. After receiving no call, Appellant phoned the pharmacy at 7 a.m. on Monday morning July 21st, and spoke with Pharmacist Min Kim. Appellant told Ms. Kim that her military leave was cancelled. Appellant stated that she was not coming in that day, and asked if that was okay. Appellant testified that, in her eyes, the on-duty pharmacist is the person in charge, although there was a rule that employees must request time off from Ms. Le. Appellant then asked Ms. Kim for her schedule for the rest of the week. Ms. Kim answered that she did not know, but that Ms. Le was coming in soon, and she would ask her and get the new schedule. Appellant told Ms. Kim that she would call her back.

Because the pharmacy is always short-staffed, Ms. Kim was "very surprised" when Appellant told her she was not coming in that day. She immediately called Ms. Le and told her that Appellant was not coming in that day. Ms. Le asked Ms. Kim to call Appellant and tell her to come to work. Ms. Le then changed her mind, and told Ms. Kim she would call Appellant herself. Ms. Le hung up and called Appellant's home and cell phones. When there was no answer, she left messages that Appellant needed to come to work. Appellant did not call the pharmacy again until 5:00 p.m. that evening.

Ms. Le came in before 8:30 a.m. that Monday morning to redo the schedule as a result of Appellant's leave cancellation. Ms. Le printed out a revised schedule that assigned Appellant to do pre-pack starting at 9 a.m. on Monday, and 7 a.m. for the rest of the week. [Exh. 16-4.] At Appellant's request, Ms. Le assigns Appellant to begin work at 7 a.m. to allow her to attend school at 11 a.m. and return to finish her shift. After revising the schedule, Ms. Le left to resume her vacation, and did not return to work until the following Monday. When Ms. Kim left on Monday at 3:30 p.m., she told

the late shift pharmacist what Appellant's schedule was for the rest of the week. As a result of Appellant's absence, the pharmacy hired a worker for eight hours from Rxpro Health, a temporary agency. [Exh. 15-4.]

Based on the pharmacy's heavy work load and lack of trained back-up staff, Ms. Le was confident that Appellant understood she was expected to come to work after her military leave had been cancelled. All staff members are expected to work on Mondays, the pharmacy's busiest day. Ms. Le grants last-minute changes in the schedule only if there is an emergency, and all staff members are aware that that policy. Pharmacists such as Ms. Kim do not have the authority to grant leave requests. Schedule changes take a few hours to resolve because Ms. Le must consider the expected volume for the day, each staff member's training, staff availability, and Appellant's school schedule. Agency policy requires that an employee call the supervisor or designee at least two hours before the start of the scheduled shift, but such notification "does not 'excuse' any absence." [Exh. 21-1, § A.1.]

Appellant testified that she didn't give Ms. Le the note that her training had been cancelled earlier in the day on July 18<sup>th</sup> because "time got away from [her]", and she didn't know how long it would take to get her back on the schedule. She did recall that Ms. Le was scheduled for vacation starting July 21<sup>st</sup>. When Appellant did not hear from Ms. Le later that day or over the weekend, she called the pharmacy Monday morning. She decided to take that Monday day off and do errands after Ms. Kim told her she did not know when she was scheduled to come in. Appellant assumed Ms. Kim could revise the schedule. She did not retrieve her voice mail messages that day. Appellant called work again at 5 p.m. when she returned home that day. The late shift pharmacist gave her the new schedule, and Appellant reported to work at 7 a.m. for the rest of the week.

When Ms. Le returned to work on Monday July 28<sup>th</sup>, she requested a meeting with Appellant and Ms. Kim to obtain facts about Appellant's July 21<sup>st</sup> absence. Appellant told them she did not come in because she was not on the schedule, and thought Ms. Kim okayed the day off, since she had not said they were short-handed. Ms. Kim explained that she had meant it was okay for Appellant to call back to get the revised schedule, not as permission to take the day off. Ms. Le informed her that she had left her messages to come in, but that Appellant did not call back until 5 p.m. that day. She reminded Appellant that she does not grant last-minute days off. Appellant admitted that neither Ms. Le nor Ms. Kim had given her permission to take the day off.

### 3. Disciplinary procedure

The initial pre-disciplinary letter based on the above absences was sent to Appellant on August 3, 2008. [Exh. 6-1.] At the pre-disciplinary meeting held August 12th, Appellant admitted her absence on May 9<sup>th</sup> was her mistake, and that she took July 21<sup>st</sup> off without authorization from Ms. Le or Ms. Kim. A second pre-disciplinary letter was sent on Sept. 3<sup>rd</sup> because the disciplinary decision was not sent within the deadline mandated by Career Service Rule (CSR) § 16-73 B. [Exh. 7.] When Appellant

declined to accept that letter, a third pre-disciplinary letter was delivered and accepted by Appellant on Sept. 24, 2008. [Exh. 3.] The second pre-disciplinary meeting was held on October 3, 2008.

At the second meeting, newly appointed Assistant Director of Outpatient Pharmacies Victor Gomez presided over the meeting and acted as Agency designee for the disciplinary decision. Appellant again admitted the absences, and presented no additional information. Mr. Gomez took into consideration the statements made in the previous meeting, and the documents submitted by Appellant and the Agency related to the military leave requests. Mr. Gomez also considered Appellant's two past reprimands for tardiness and absenteeism. On October 6<sup>th</sup>, the Agency imposed a three-day suspension based on the seriousness of unplanned absences on pharmacy operations. [Exh. 4.] Since Appellant had requested leave for Oct. 23, one of the suspension days, the disciplinary letter was re-issued, substituting Oct. 24<sup>th</sup> as the third day of suspension. [Exh. 1.]

#### **IV. ANALYSIS**

The Agency bears the burden to prove that the imposition of discipline was appropriate under the Career Service Rules, and that the level imposed was within the range that could be issued by a reasonable administrator. Here, the Agency contends that Appellant violated CSR § 16-60 R and Denver Health Policy ## 4-122 and 5-106 by her absences on May 9 and July 21, 2008.

##### **1. May 9, 2008**

The only factual dispute as to this incident is whether Appellant furnished her supervisor with her training order before May 12<sup>th</sup>. Appellant testified that she placed a copy of the order in her supervisor's mailbox the day after she received it on April 22<sup>nd</sup>. Appellant added that she always gives Ms. Le a copy of her orders before she leaves if she has received them by that time. Ms. Le testified that she did not receive a copy of the order until May 12<sup>th</sup>, after she asked Appellant for it upon her return from leave. Ms. Le also stated that Appellant never gave her copies of the orders until she returned from leave, and told her more than once that she did not get them until she went to the training. Appellant testified that she told Ms. Le she could not give them to her until she got them herself.

Appellant has worked at the pharmacy for over twenty years. Throughout that time, Appellant has been in the military reserves, and has made at least one leave request for military training each year. Appellant did not dispute her supervisor's testimony that leave requests are to be placed on her desk in a specific place, or posted on her computer. Appellant also did not rebut the Agency's strong evidence that the pharmacy is extremely busy and staffing is lean. The monthly work schedule is a document of great importance in the smooth operation of the pharmacy. Ms. Le made it a practice to note her date of receipt on documents related to leave requests. [Exhs. 8, 9, 19.] Based on that established practice, I find that Ms. Le did not receive a copy of

the May training order until May 12, 2008. [Exh. 9.] Appellant had notice and actual knowledge of the pharmacy procedures regarding leave and scheduling, and failed to take reasonable steps to correct her original mistake in her leave request, and to avoid her unscheduled absence on May 9<sup>th</sup> by any other means at her disposal.

Appellant argues that she was not at fault for her May 9<sup>th</sup> absence, since Ms. Day would have given her that day to travel back to Colorado if Ms. Le had sent the leave request to the Benefits Department, in compliance with Agency policy #5-106, 1.1. [Exh. 20-1.]

At the time Appellant submitted her leave request, Agency policy required that an employee send a copy of the request to the Benefits Department. Five days later, the policy was changed to require the supervisor "to ensure a 'Request for Leave of Absence' has been completed and to forward the Form to the Benefits Department at Mail Code 0114." [Exh. 20-12, dated 03/25/08.] The requested leave, May 4 – 8, was approved on April 14, 2008.

Ms. Day testified that the purpose of her department's review of short-term training leave was to provide a second set of eyes to notify the employee and supervisor of the dates of the leave, including travel. She would have added May 9<sup>th</sup> as a travel day for Appellant's return trip. However, her letter is not supervisory approval of that day. Given the pharmacy's acute staffing needs and the short distance from San Antonio, Texas to Denver, Colorado, Ms. Le may well have declined to approve that travel day. In any event, the policy's statement of responsibility for transmitting the leave request to the Benefits Department described a ministerial task, not a substantive right granted to an employee. Ms. Le's failure to forward the leave request to the Benefits Department was not the cause of Appellant's mistake on her leave request, nor did it deprive her of the opportunity to correct it. Moreover, the possibility that the day may have been approved as a travel day does not exonerate Appellant from her actions in failing to request leave for that day.

Appellant also argues that discipline was inappropriate because she was on military training duty that day, and she gave her supervisor adequate notice that it included that Friday when she referred to the leave as covering a week. The evidence does not support that argument. In a six-day-a-week operation, use of the word "week" could have more than one meaning, and cannot be said to override Appellant's own leave request. That request specifically asked for May 4 to May 8<sup>th</sup>. On April 22, Appellant received her official orders from the military, which showed that the training was five days' long, commencing on May 5, 2008. Appellant did not re-check her leave request to confirm the correct dates. In addition, Appellant did not place a copy of her military training order in her supervisor's office on the area of her desk designated for such requests, or leave a note on her computer, as was the accepted practice. Instead, Appellant placed the order in her supervisor's office mailbox, and that copy was never located. A third opportunity to correct her mistake occurred in late April, when the May schedule was delivered to all pharmacy staff, several days before the start of her training leave. Finally, on May 9<sup>th</sup>, Appellant failed to retrieve her supervisor's phone

messages inquiring about her absence. Appellant was the only person in a position to correct the initial mistake in her leave request, and she ignored several clear opportunities to do so. Appellant admitted that her supervisor had no obligation to further investigate the accuracy of her leave request. Thus, the Agency was not on notice that Appellant intended to request May 9<sup>th</sup>.

In contrast, Ms. Le was required to approve the leave request, set the monthly schedule, and cover Appellant's unexpected absence without the necessary information only Appellant could provide. Appellant had a duty to make an accurate request, or to correct errors in that request, in a timely manner. When she failed to do so, and was absent without leave, her absence was unauthorized in violation of CSR § 16-60 R, and Agency policy ## 4-122 and 5-106, ¶ 4.1 [Exh. 20-7.]

## 2. July 21, 2008

The Agency claims that Appellant's failure to come to work on July 21<sup>st</sup> after cancellation of her training was an unauthorized absence in violation of Agency policy and CSR § 16-60 R.

The Agency approved military leave for that day on June 6, 2008. Appellant cancelled that leave at 3 p.m. on July 18<sup>th</sup>, and awaited word that she had been added to the schedule. Appellant knew that Ms. Le would be on a week's vacation after her shift ended that day. She also knew that Monday is the busiest day at the pharmacy, and that her usual shift started at 7:00 a.m. Appellant called at 7:00 a.m., and informed the pharmacist that she would not be in that day, but would call to get her schedule for the rest of the week. Appellant did not call again until 5 p.m., and did not retrieve her supervisor's messages. As a result, the pharmacy was required to hire a temporary employee for the day.

Once Appellant cancelled her leave, and did not request any other type of leave, she was required to resume her normal work schedule on July 21. Appellant was aware of the unit's leave practices, weekly work load and acute staffing needs, as well as its strict leave policies, based on her twenty years' employment at the pharmacy. Appellant admitted that her absence was unauthorized by her supervisor. Even if she misunderstood Ms. Kim's response to her statement that she was not coming in that day, Appellant's failure to communicate for the remainder of the day did not avoid the consequences of her absence without leave.

Appellant argues that she did not violate policy because she was not on the written schedule at the time she called on Monday morning. Appellant had a regular shift that started at 7 a.m., and was only removed from the schedule because of her request for training leave. Appellant was on the revised schedule by 9 a.m. on July 21<sup>st</sup>. Appellant's own actions caused both the delay in changing the schedule and her lack of knowledge of the revised schedule until 5 p.m. that evening. Moreover, the schedule's function was to record the supervisor's best information of assignments for each shift.



There is no evidence that it was intended to or did supersede the Agency or CSA policy on leave or attendance.

When Appellant cancelled her military leave, and made no request for any other leave, her absence on July 21<sup>st</sup> was unauthorized, in violation of CSR § 16-60 R. and Agency policy 4-122 A.1.

### 3. Appropriateness of Discipline

The Agency imposed a three-day suspension based upon its conclusion that Appellant's absences on May 9<sup>th</sup> and July 21<sup>st</sup> were unauthorized and thus violated Agency and CSA policy of leave and attendance. Appellant claims the three-day suspension was excessive because the absences were unintentional, and could have been avoided by actions of the Agency.

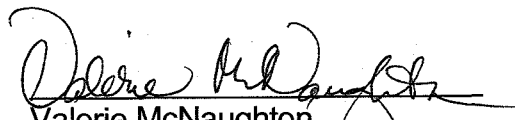
As found above, the Agency established that the two absences were unauthorized in violation of the rules governing Appellant's employment. Agency policy gave Appellant ample notice of the seriousness of absenteeism. "Two absences without appropriate notice (no call/no show) within a rolling twelve month period . . . may result in severe corrective action, up to and including termination." [Exh. 21-1, Policy # 4-122 A.2.] Appellant's twenty years with the pharmacy gave her notice of the importance of attendance at each shift. She admitted that the work load required that she give her supervisor plenty of time to revise the schedule to accommodate her leave requests. These absences contravened not only Agency policy but Appellant's past practices with regard to her leave requests.

In imposing this suspension, the Agency took into consideration Appellant's past discipline for similar attendance issues in 2006 and 2007. [Exh. 1-2.] In consideration of the critical importance of attendance to the pharmacy, and the adverse consequences stemming from Appellant's absences, a three-day suspension was reasonably related to the seriousness of the offenses, and was within the range of discipline that could be imposed by a reasonable administrator under the principles of progressive discipline. CSR §§ 16-20, 16-50.

### IV. ORDER

Based on the foregoing findings of fact and conclusions of law, the Agency action dated October 20, 2008 is AFFIRMED.

DATED this 16th day of January, 2009.

  
Valerie McNaughton  
Career Service Hearing Officer