

**FINDINGS AND DECISION
OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE
UNDER DELEGATION FROM THE CIVIL SERVICE COMMISSION**

STEVE HAMAI)	
)	
Appellant)	Civil Service
v.)	Commission File:
)	CSC 07-01-006
CITY OF SEATTLE,)	
HUMAN SERVICES DEPARTMENT)	
)	
Respondent)	

Introduction

Steve Hamai timely appealed his demotion from Senior Human Services Program Supervisor of Youth Development, to Planning and Development Specialist II, in the Human Services Department. Pursuant to SMC 4.04.250L.7, the Civil Service Commission delegated the appeal to the City of Seattle Hearing Examiner for hearing and decision. The issue on appeal is whether there was just cause for the demotion.

The appeal hearing was held on September 5, 6, 7 and 28, and October 3, 26 and 29, 2007, before the undersigned Hearing Examiner (Examiner). The Appellant, Steve Hamai, was represented by Sean M. Phelan, attorney-at-law. The Human Services Department (Department) was represented by Erin Overbey, Assistant City Attorney. The record was held open until November 21, 2007, for the parties to file written closing briefs.

Having considered the evidence in the record, and the arguments of the parties, the Examiner enters the following findings of fact, conclusions and decision on the appeal:

Findings of Fact

Background

1. The Seattle Youth Employment Program (SYEP) works with youth who have little or no work experience, may be struggling in school, or have other circumstances that make it difficult for them to secure employment. SYEP helps the youth successfully complete high school and acquire skills required to find and retain a job. The program is funded by the City, Federal Workforce Investment Act funds and private donors.
2. There is an inherent tension in SYEP between the administrative staff, which focuses on compliance with program details and funding requirements, and the direct service

staff, the Youth Development Specialists (YDS) who are trained case managers for the youth. The administrative staff is supervised by Sharon Trueblood, and the YDS are supervised by Patricia Stuart. The YDS staff believe the administrative staff is inflexible and exceeds its authority by attempting to manage YDS staff. The administrative staff believe Ms. Stuart is influenced by her personal friendships with the YDS staff, covers for them, and fails to hold them accountable for complying with City and program policies and procedures.

3. Before the Appellant arrived as Director, SYEP had experienced what Eric Anderson, the Appellant's Division Director, described as a "vacuum in leadership". The Appellant's position had been vacant for several months, and the prior Director had served for only two years. The program lacked written policies and procedures for operation and written documentation of outcomes. It also had a history with funders of delayed response and late reports.

4. The Appellant was Director of SYEP from December of 2003 to March of 2007, having been recruited by Anderson. He came to the program with two primary mandates: to transform SYEP from a summer employment program to a year-round program with a greater focus on educational outcomes; and to establish written program policies and procedures.

5. The Appellant brought clarity to the program through reducing YDS caseloads, focusing on tracking outcomes with the youth, establishing written policies and procedures, and defining the lines of decision-making authority. He developed a "leadership team" composed of himself, Stuart, Trueblood, a YDS, and the Education and Contracts Coordinator. The team met weekly and discussed new policies, procedures, and information about the program. Once a position was agreed upon, Stuart and Trueblood were responsible for relaying it to their respective staffs. Stuart frequently failed to follow through on this task, not wanting to take ownership of leadership team decisions she disagreed with, or that might be unpopular with her staff. This left her staff to get their questions answered by administrative staff or at weekly all-staff meetings.

6. The SYEP staff was not entirely invested in the changes implemented by the Appellant. The administrative staff and some YDS welcomed the changes. Other YDS were accustomed to being direct participants in the decision-making process under the prior Director and were unhappy with the changes. Some openly challenged new policies and procedures; others simply ignored them and/or worked around them to achieve their own goals for their youths. Being comfortable with the way things had been done in the past, Stuart tolerated this behavior and was often at odds with Trueblood and the administrative staff about it.

Phi Huynh

7. Some YDS staff felt the Appellant scrutinized them more closely than other employees. These included Phi Huynh, a YDS who has worked in various capacities for SYEP since 2002 and was unhappy with the Appellant's changes. Mr. Huynh is described by most of his coworkers as very capable, hard-working, and professional in

his contacts outside SYEP staff. However, several SYEP staff stated that Mr. Huynh is frequently confrontational and sarcastic in the office. YDS staff who consider him a friend characterize Mr. Huynh as argumentative and challenging, a description he accepts, noting that he considers these to be defining characteristics of his generation. Even one of his greatest supporters noted that others may find Mr. Huynh's personality abrasive.

8. Mr. Anderson had "quite a few interactions" with Mr. Huynh in which he was "flip" or otherwise inappropriate in comments to Mr. Anderson. (Testimony of Anderson) The Appellant and Mr. Anderson regularly discussed Mr. Huynh's communications issues, including his argumentative responses to constructive criticism.

9. Mr. Huynh was openly gay when the Appellant arrived as Director in December of 2003. The Appellant was aware of Mr. Huynh's sexual orientation no later than February of 2004, when staff met to discuss outreach to particular populations. Mr. Huynh stated that he had found that being gay is a barrier to employment and spoke about outreach to gay and lesbian youth.

10. Ms. Stuart has a high regard for Mr. Huynh's work, but describes him as socially immature. Mr. Huynh helps Ms. Stuart with her work, and they maintain a personal friendship outside of work. Ms. Stuart is friendly with most of her staff outside of work.

11. The Appellant initially shared Ms. Stuart's high opinion of Mr. Huynh, but over time, he became frustrated with what he characterized as Mr. Huynh's arrogant and "cocky" attitude and communication style and his resistance to constructive criticism. In addition to experiencing this himself, the Appellant dealt with other staff members' complaints about it, although the evidence shows that he exaggerated most of their complaints. He referred the complaints to Ms. Stuart, who sometimes spoke with Mr. Huynh about the problem, but nothing changed. The Appellant and Mr. Huynh began to openly demonstrate a mutual lack of respect through such things as negative body language, rolling eyes at one another's comments in staff meetings, and avoidance.

"Lifestyle Choice" Remarks

12. At a December, 2004 staff meeting, SYEP interns presented their ideas for a workshop entitled "Queerphobia" about issues faced by gay youth. Mr. Huynh found the workshop title very offensive and was concerned that although he was openly gay, no one had asked him about the workshop or its title. Rather than raising these concerns in the meeting, he took what he describes as a "devil's advocate" approach, asking the interns whether parents might not want their children exposed to this issue, or might think that SYEP was trying to recruit youths into being gay. The Appellant responded with a comment about youth attending school with many others, some of whom have different orientations and lifestyles. He regarded Mr. Huynh's comments as negative rather than contributing to a solution, and asked to meet with him and Ms. Stuart after the staff meeting.

13. The subsequent meeting was to discuss Mr. Huynh's communication style, and the Appellant stated that he viewed Mr. Huynh's approach in the staff meeting as passive-aggressive. He discussed other ways in which Huynh could have raised the issue and contributed to a solution. Mr. Huynh told the Appellant that he found the term "lifestyle choice" as applied to gay people offensive. Rather than apologizing and returning to the issue at hand, the Appellant into an argument with Huynh about whether being gay is a lifestyle choice. Emotions escalated, and Mr. Huynh became increasingly upset and left the meeting after the Appellant said something to the effect of 'it's my values or you can leave the program.'

14. Mr. Huynh remained upset about the Appellant's approach and talked with Ms. Stuart the following day, who advised him to talk with other gay staff members about his concerns or go to the Department's Human Resources Office (HR). Later that month, the HR Manager was called over to a conversation between Mr. Huynh, who was "visibly upset," and another gay employee. (Testimony of Yapp) The employee told her there had been a conversation between the Appellant and Mr. Huynh that had been very upsetting to Huynh because it had brought back memories of all he had encountered as a gay male in high school. The HR manager asked Huynh to come to her office the next day.

15. In the HR manager's office, Huynh was reluctant to share information with her, but told her that during a conversation, the Appellant had used a term that was very upsetting to him. He indicated that he wanted to talk with the Appellant about the matter, so the HR manager had her EEO specialist follow up with him. Meanwhile, the HR manager contacted the Appellant to advise him that Mr. Huynh had been upset by the Appellant's terminology during their conversation. The EEO specialist advised Huynh to contact the City's Alternative Dispute Resolution Program or file a formal complaint. He chose to do neither; he did not wish to be involved in an investigation and was also concerned that the Appellant might revoke his flexible work schedule.

16. Ms. Stuart believes that the Appellant became excessively critical of Mr. Huynh after the February, 2004 meeting in which Mr. Huynh reveal that he was gay. Mr. Huynh believes the Appellant started to treat him differently after the December, 2004 meeting. He noticed, for example, that his suggestions in staff meetings would be left "hanging" without a response.

17. Some SYEP staff believe the Appellant treated Mr. Huynh rudely or disrespectfully and scrutinized his work more than that of other YDS staff; others disagree. The weight of the evidence is that in dealing with problems concerning such things as missing bus passes, missing files, and complaints about administrative staff copying YDS drivers licenses for use of City cars, the Appellant was quick to jump to the conclusion that Mr. Huynh was the guilty party, even when there was conflicting evidence.

CNA Evaluations and Budget Issues

18. Despite his concerns with Mr. Huynh's communication style and conflict resolution skills, the Appellant supported the decision in June of 2005 to put Mr. Huynh in charge of

the Certified Nursing Assistant (CNA) Intern Program run in conjunction with South Seattle Community College. The program focuses on training bilingual and bicultural youth in the health care field, and Mr. Huynh is bilingual and bicultural, and interested in health care. The position involved working more closely with the Appellant and was a growth opportunity for Mr. Huynh, providing a higher level of responsibility and visibility.

19. During the summer of 2006, SYEP was dealing with significant budget issues. The grant that funded the CNA program expired on June 30, with no guarantee of renewal. The Appellant used funds from other sources to keep the program running through the summer, but the budget shortfall was a topic of frequent discussion in leadership and all-staff meetings. All staff who testified, other than Ms. Stuart and Mr. Huynh, stated they were aware of the serious budget problem facing SYEP and impending layoffs.

20. Mr. Huynh testified that what he heard in staff meetings was “not to worry” about the budget issues in the CNA program. Therefore, despite the program’s budget problems, Mr. Huynh hired two interns, participants in the prior year’s program, to assist with the 2006 CNA summer program. He spoke with the Appellant about hiring one of the interns, but not about the second one, or about the fact that the second intern was working in two jobs, for a total of 40 hours per week.

21. An issue arose concerning CNA student evaluations, which were directly related to their stipends from SYEP. Staff at South Seattle Community College (SSCC) had completed the evaluation forms in 2005, but declined to do so in 2006. The Director of the Nursing Program called the Appellant in July of 2006, relaying concerns about the subjectivity of the evaluation tool, and the fact that the interns doing the evaluations were the students’ peers and also lacked the experience to complete them. When questioned by the Appellant about the evaluation process, Mr. Huynh stated that he had completed the forms. When the Appellant reviewed the forms, he noted that they were not in Mr. Huynh's handwriting. One intern later confirmed that Mr. Huynh had given them the evaluation forms at the start of the program, they had completed them, and then they had met with Mr. Huynh and the students to review them. From this, the Appellant concluded that Mr. Huynh had lied to him about completing the forms. The forms show that Mr. Huynh changed some of the scores and initialed the changes. (Exhibit 1B, “Worksite Performance Evaluation”) The Appellant directed Mr. Huynh to destroy the original evaluations, observe two classes, and complete a new set of evaluations, which he did.

22. The Appellant mentioned the CNA evaluation incident to the Department's HR manager during a meeting on layoffs due to funding cuts, and asked if the incident was sufficient to warrant discipline for Mr. Huynh. The HR manager told him additional fact-finding would be necessary before a discipline decision could be made. Rather than doing additional investigation, the Appellant directed Ms. Stuart to issue a verbal warning to Mr. Huynh. However, Ms. Stuart contacted HR, and it was agreed that she would investigate further before issuing any discipline. Ultimately, no discipline was issued.

23. Ms. Stuart had sent out an email during the summer of 2006 asking if any YDS had youths who were going to exceed limits on hours or end-of-program deadlines. Mr. Huynh did not respond to the email. In early September, several weeks after the Appellant began looking into the CNA evaluation process, he was notified by Ms. Trueblood that one of Mr. Huynh's CNA interns had been working two jobs, for a total of 40 hours per week.

24. It was not uncommon for interns to split hours between different jobs, but the evidence shows that even during years with sufficient budgets, a YDS would be required to obtain Ms. Stuart's permission to allow an intern to work 40 hours per week. Mr. Huynh had not followed this procedure.

25. When the Appellant learned that an intern was working two jobs for a total of 40 hours, he became very upset about the financial implications for the program and discussed it with Mr. Anderson. The Appellant was preparing to leave on vacation and was already under investigation. He talked with Ms. Stuart about the problem but refused to allow her to discuss the issues with Mr. Huynh. He later stated to the investigator that he did not want to "hear Huynh's excuses". He directed Ms. Stuart to issue a written warning to Mr. Huynh without doing any further investigation or consulting HR.

26. Ms. Stuart was familiar with procedures for employee discipline, having handled difficult disciplinary problems in the past. While the Appellant was on vacation, she went to Mr. Anderson, who directed her to consult with the Department's HR manager. Although she thought she would get "in big trouble" for going to HR, Ms. Stuart did so, and the HR manager determined that further investigation was necessary before they could consider discipline for Mr. Huynh. (Testimony of Stuart and Yapp)

27. The Appellant has acknowledged that several YDS staff routinely violated SYEP policies and procedures, such as not signing out for City cars and not returning them to the City parking garage for days, failing to follow prescribed enrollment procedures, and giving bus passes to youths who are no longer participating in the program. However, the Appellant has not directed discipline for any SYEP staff member other than Mr. Huynh.

Performance Evaluations

28. Employee performance evaluation forms include space for the immediate supervisor, or "rater" to write comments about an employee's strengths and accomplishments, and about "areas for improvements/strengthening". There are separate spaces for employee comments and for comments from the "reviewer," i.e., the immediate supervisor's manager.

29. In October of 2005, Ms. Stuart had attended a class taught by the Department's HR manager on performance evaluations. Ms. Stuart had asked what a supervisor should do if his or her manager asked the supervisor to change an evaluation of the supervisor's subordinate. She was told that the manager is to provide his or her own comments in the "reviewer" section of the performance evaluation form. This was standard procedure

taught in the Department's evaluation trainings. (Testimony of Yapp; Exhibit 19, 10/18/06 Statement, at 2).

30. When Ms. Stuart prepared Mr. Huynh's 2004/2005 evaluation, she send a draft to the Appellant, who directed her to include criticism of Mr. Huynh's communication and conflict resolution skills in her comments. Ms. Stuart did not agree with the criticisms, as she recalled just one staff member contacting her about a minor incident with Huynh. Nonetheless, she added criticisms to the evaluation and reviewed it with the Appellant. He directed her to include additional comments and criticisms. She did so, but the Appellant sent back comments asking her to include sentences "about your continuing discussions with him over the past year regarding this issue." (Exhibit 4A, Testimony of Stuart) Although she did not agree with the requested criticisms, and had not had "continuing discussions" with Mr. Huynh on communications and conflict resolutions issues, Ms. Stuart again made the changes requested by the Appellant and prepared the final evaluation. (Exhibit 4B) Ms. Stuart had also been directed to include similar criticisms in Mr. Huynh's 2003/2004 evaluation. (Testimony of Stuart and Yapp)

31. Ms. Stuart was not required to downgrade evaluations of any other present YDS staff, although the Appellant had required her to downgrade an evaluation for a YDS who was subsequently laid off.

32. The Appellant's training at the City has included Departmental training in supervisor performance evaluation and employee performance evaluation, and a "new employee" orientation that included an overview of the Department's anti-harassment policies. In addition, the Appellant acknowledged that he is familiar with the Department's requirement that all discipline go through HR.

33. The Appellant blamed much of his problem in dealing with Mr. Huynh on Ms. Stuart's failure to hold Mr. Huynh and her other staff accountable, or to follow through on discipline the Appellant requested.

34. There is no evidence in the record that the Appellant documented any of Ms. Stuart's shortcomings in her performance evaluations. In fact, he stated to the investigator that Ms. Stuart had good qualities as well as deficiencies as a supervisor, and that he had determined to "ride out the time until Stuart retires and continue to work with her on her strengths." Exhibit 10, 10/24/06 Statement, at 5.

The Investigation

35. One YDS, Barbara Winbush, alleged that the Appellant treated her differently from other YDS staff based upon race, gender and/or age, and cited four specific incidents of alleged discrimination. The Department retained an outside human resources consultant to investigate the claim. The investigator interviewed all current SYEP staff, the head teacher in the Youth Education Program (YEP), which is associated with SYEP, a former AmeriCorps intern with SYEP, the Nursing Director at South Seattle Community College, two program interns, and a former HR Personnel Specialist. She also reviewed

over 3,000 documents, including staff personnel and supervisor files, SYEP policies and procedures, selected timesheets and e-mail correspondence.

36. After meeting with HR, the investigator interviewed Ms. Winbush. As the investigator proceeded through the interviews, the investigation's scope broadened. Ms. Winbush alleged that the Appellant also treated Ms. Stuart unfairly. Ms. Stuart agreed that the Appellant treated her unfairly because of her race, discounting her opinions and expertise and always taking Ms. Trueblood's side in disputes between Trueblood and Stuart. She also alleged that the Appellant treated Mr. Huynh unfairly based on his sexual orientation.

37. When the investigator interviewed Mr. Huynh, he alleged that after December of 2004, the Appellant criticized him for questioning supervisors, attempted to discipline him without prior investigation, downgraded his performance evaluation, and unfairly and publicly criticized him.

38. Although Ms. Stuart corroborated Mr. Huynh's allegation that the Appellant had directed that he be disciplined without investigation, she denied a similar allegation by a different YDS whom she was also considered to favor.

39. The investigator used her handwritten notes to dictate a summary of each witness interview, which was then transcribed. She reviewed the summaries and gave them to each witness to review in her presence. The investigator asked each witness for any clarifications needed, and those were included at the end of the summaries. The summaries and clarifications were then printed out, and each witness signed his or her summary and initialed each page.

40. The investigator concluded that the Appellant did not discriminate against Ms. Winbush or Ms. Stuart on the basis of race, gender or age. She concluded that the Appellant did discriminate against Mr. Huynh on the basis of his sexual orientation. The investigator found evidence that the Appellant repeatedly directed Ms. Stuart to discipline Mr. Huynh without first investigating whether the conduct warranted discipline or based on a perfunctory investigation; downgraded Mr. Huynh's performance evaluation against Ms. Stuart's objection; and unfairly and publicly criticized him.

Loudermill Meeting and Discipline

41. The Department Director, Patricia McInturff, reviewed the investigator's Investigative Summary (Report) and the interview summaries, consulted with Mr. Anderson, and questioned the investigator on the investigation process and how she had reached her conclusions. On February 1, 2007, Ms. McInturff notified the Appellant by letter of the investigator's conclusion and attached a copy of the Report. The letter stated that Ms. McInturff was considering disciplinary action against the Appellant and offered him the opportunity for a "Loudermill" meeting to present any mitigating factors she should consider.

42. At the Loudermill meeting on February 12, 2007, the Appellant presented a five-page list of questions that he asked of Anderson, the HR Manager, and the investigator. The Appellant took no responsibility for the problems within SYEP, including the management issues identified in the Report, and offered no suggestions for improvements.
43. Following the meeting, Ms. McInturff again reviewed the Report and sworn statements and weighed the credibility of the witnesses. She consulted with legal counsel and considered the Appellant's presentation at the Loudermill meeting. She considered the Appellant's mandates in accepting his position, the fact that some staff were resistant to his changes, and the inherent tensions between the administrative staff and the YDS.
44. Ms. McInturff determined that the Appellant's actions did not meet the legal definition of discrimination on the basis of sexual orientation, but that he had treated Mr. Huynh and two other employees in a manner that created a perception of discrimination on the basis of sexual orientation, race, gender and/or age. She determined that the Appellant's actions had the potential of subjecting the City to liability and were clearly inconsistent with workplace expectations and Department and City policies concerning discipline, performance evaluations, and fostering a respectful work environment.
45. Ms. McInturff also reviewed the Department's prior disciplinary decisions to assure consistency, but found nothing directly comparable. However in one case, an investigation had concluded, and she had agreed, that a supervisor had harassed an employee in the workplace. The supervisor in that case was chagrined and acknowledged a need for assistance in correcting his behavior. The resulting discipline was a significant demotion in both responsibility and salary.
46. Ms. McInturff used the prior case in determining the appropriate discipline for the Appellant. She determined that the investigation of the Appellant demonstrated that he was significantly unable to perform his supervisory job, particularly because he took no responsibility for the problems brought to light by the investigation. Consequently, she decided that suspension was not an appropriate discipline. However, the Appellant had been a valuable employee as a planner, and she wished to utilize his skills where they were needed and valued.
47. Ms. McInturff notified the Appellant, by letter of March 19, 2007, that she was demoting him to the non-supervisory position of Planning and Development Specialist II, in Leadership and Administration, with a salary reduction of approximately \$2,500 per year. The letter cited three specific instances of management failure: 1) that the Appellant argued with Mr. Huynh about whether homosexuality is a lifestyle choice even after he told the Appellant that he found that phrase offensive and upsetting; 2) that the Appellant knowingly disregarded well-established procedures when instructing a supervisor, on multiple occasions, to initiate discipline against Mr. Huynh without a full investigation and review by HR; and 3) that the Appellant instructed Ms. Stuart to revise Mr. Huynh's performance evaluation in a manner that was inconsistent with her own

opinion of his work rather than confining his criticisms of Mr. Huynh's performance to the "Reviewer" section of the evaluation.

48. At hearing, the Appellant denied that he had ever been the subject of a prior complaint of harassment. However, the evidence shows that he was the subject of a prior harassment complaint that was investigated and determined to be credible. Because he responded appropriately when confronted by the complainant, discipline was not imposed in that case. (Exhibit 39)

49. The Appellant also denied at hearing that his actions had ever been the subject of an ethics investigation, but the evidence shows that he was investigated for having misrepresented an hourly employee as a student entitled to a stipend. Discipline was not imposed against the Appellant because he left City employment before the investigation was concluded. However, his manager was suspended for four weeks as a result of the misrepresentation, and the Department was required to address withholding issues with the Internal Revenue Service.

Applicable Law

50. Under Seattle Personnel Rule (PR) 1.3.3 C, a regularly appointed employee may be demoted only for justifiable cause, which requires the following:

1. The employee was informed of or reasonably should have known the consequences of his or her conduct;
2. The rule, policy or procedure the employee has violated is reasonably related to the employing unit's safe and efficient operations;
3. A fair and objective investigation produced evidence of the employee's violation of the rule, policy or procedure;
4. The rule, policy or procedure and penalties for the violation thereof are applied consistently; and
5. The suspension or discharge is reasonably related to the seriousness of the employee's conduct and his or her previous disciplinary history.

51. The disciplinary action imposed "depends upon the seriousness of the employee's offense and such other considerations as the appointing authority ... deems relevant." However, a "knowing or intentional violation" of the Personnel Rules or a department's adopted policies, procedures and workplace expectations, constitutes a major disciplinary offense under PR 1.3.4 A.15, and "in the absence of mitigating circumstances," requires suspension, demotion or discharge. PR 1.3.3 B.

52. PR 1.1.3 states that "harassment of an individual is illegal conduct and a violation of this Rule," and that the City will not tolerate harassment of its employees by supervisors. PR 1.1.1D defines "harassment" as including verbal conduct toward an individual because of his or her sexual orientation "when such harassing conduct has the purpose or effect of unreasonably interfering with an individual's work performance".

Conclusions

1. The Hearing Examiner has jurisdiction over this appeal pursuant to delegation from the Civil Service Commission under SMC 4.04.250.
2. The Department must show by a preponderance of the evidence that the decision to demote the Appellant was supported by justifiable cause. Commission Rule 5.31.
3. Although the Appellant was not disciplined as a result of the prior harassment complaint, or the prior ethics investigation, the fact that he denied, under oath, the documented facts that he was a subject of those investigations affects his credibility in this appeal.
4. The Appellant's arguing with Mr. Huynh over the term "lifestyle choice," and stating that "it's my values or you can leave the program," was disrespectful and offensive and required an apology, which was not forthcoming. Further, the Report demonstrates that this incident, considered together with the Appellant's propensity for finding fault with Mr. Huynh, his instruction that Mr. Huynh be disciplined without sufficient investigation or consultation with HR, and his direction that Mr. Huynh's performance evaluation be downgraded over the objection of his supervisor, could lead to a perception of harassment or discrimination.
5. The Appellant knew of the Department's policies and procedures for employee discipline, including the requirement that *all* discipline go through HR. Further, the resources of HR were available to him for consultation on personnel and disciplinary matters.
6. When the Appellant instructed Ms. Stuart to initiate discipline against Mr. Huynh for the incident with the CNA evaluations, without further investigation, and after having been told by the HR manager that further fact-finding was necessary, he knowingly disregarded Department policy and procedures.
7. When the Appellant instructed Ms. Stuart to initiate discipline against Mr. Huynh for not obtaining permission for a CNA intern to work 40 hours per week, without further investigation, and directed Ms. Stuart not to talk with Mr. Huynh or HR about the matter, he knowingly disregarded Department policy and procedures.
8. The Appellant has been trained on evaluations. A manager's directing a supervisor to revise an employee's performance evaluation to include material the supervisor does not agree with is contrary to the Department's practice and training. As Ms. Yapp stated, it is the employee's immediate supervisor who must be able to articulate the problem and the steps needed to resolve it. The Code also calls for an evaluation system in which the supervisor provides subordinates with performance evaluations, and the "rater's supervisor" *reviews* the evaluations. SMC 4.04.180. Further, the format of the evaluation itself leads to the logical conclusion that the reviewer's comments and opinions are to be inserted in the reviewer's comment section. Any concerns the reviewer

has with the supervisor's management of the employee must be addressed through coaching or in the reviewer's evaluation of the supervisor.

9. The record shows that the Appellant directed Ms. Stuart to revise Mr. Huynh's performance evaluation by including criticisms that she did not agree with. In doing so, he knowingly disregarded Department policy and procedures.

10. The City Personnel Rules clearly state that a knowing or intentional violation of the Personnel Rules or the Department's adopted policies and procedures is a major disciplinary offense which requires suspension, demotion or discharge. PR 1.3.3 and 1.3.4.

11. The Code calls for fair and *uniform* procedures for maintenance of an effective and responsible work force. SMC 4.04.020. The City and Department policies and procedures for employee discipline and performance evaluation fulfill this requirement and are reasonably related to the Department's safe and efficient operations. Consistency in handling disciplinary matters and performance evaluations is essential to avoiding discrimination, or the perception of discrimination, both of which can lead to distracted, unproductive employees at best, and potentially to litigation.

12. The evidence shows that the Department's investigation in this case was fair and objective. The outside investigator interviewed 20 people and reviewed a voluminous record. She took care to give witnesses the opportunity to review, and if necessary correct their statements before they signed them. Although the Department Director's conclusion differed from that of the investigator, it was based on the investigator's Report, which presents a fair and balanced picture of the facts.

13. The Appellant asserts that the investigator failed to pursue or examine evidence favorable to the Appellant and points to the Appellant's performance evaluations from Mr. Anderson, and the Appellant's frequent consultations with Mr. Anderson about Mr. Huynh's and Ms. Stuart's performance. But Mr. Anderson testified that he relied on the Appellant for most of his information about the Appellant's performance and about issues with Mr. Huynh and Ms. Stuart. Until he read the Report and witness summaries, he did not have a complete picture of the Appellant's management performance. Further, Ms. McInturff's disciplinary decision was based on specific actions by the Appellant that violated Department policies and procedures, not on his performance evaluations. Mr. Anderson supported the disciplinary decision.

14. The testimony showed that the Department applies its policies and procedures on employee discipline and performance evaluations consistently. Further, Ms. McInturff used a prior disciplinary decision for guidance in fashioning appropriate, consistent discipline in this case.

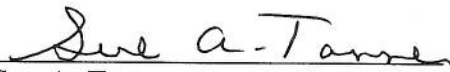
15. The Appellant's frustration with Mr. Huynh's attitude and communication style, is understandable. The problem was apparent in the record and even at hearing. And the evidence supports the Appellant's belief that the problem is compounded by Ms. Stuart's

reluctance to acknowledge or address it. But the Appellant chose not to address the issue of Ms. Stuart's supervisory abilities. Instead, he engaged in interactions with Mr. Huynh that were dismissive, disrespectful, and could be perceived as harassment. He also repeatedly flouted Department policy and procedures for progressive discipline and employee performance evaluations. These are major disciplinary offenses, and the Appellant's demotion is reasonably related to the seriousness of his conduct and disciplinary history.

Decision

The Department had justifiable cause to demote the Appellant, and the Department's decision is therefore **AFFIRMED**.

Entered this 6th day of December, 2007.


Sue A. Tanner
Hearing Examiner

Concerning Further Review

NOTE: It is the responsibility of the person seeking to appeal a Hearing Examiner decision to consult Code sections and other appropriate sources, to determine applicable rights and responsibilities.

The decision of the Hearing Examiner is subject to review by the Civil Service Commission. To be timely, the petition for review must be filed with the Civil Service Commission no later than ten (10) days following the date of issuance of this decision, as provided in Civil Service Commission Rules 6.02 and 6.03.

**BEFORE THE HEARING EXAMINER
CITY OF SEATTLE**

**CERTIFICATE OF SERVICE
BY MAILING**

I, **Alvia N. Williams**, certify that on the **6th** day of **December, 2007**, I deposited in the mail of the United States (with postage prepaid) and in the City's Mail/Messenger Service (used for City personnel only) a sealed envelope containing the attached **Findings and Decision** addressed to each person listed on the back of this affidavit or on the attached mailing list, in the matter of **Steve Hamai vs. Human Services Department**. Hearing Examiner file: **CSC 07-01-006**.

I further certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct and that this certificate of service was executed this **6th** day of **December, 2007**, at Seattle, Washington.



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BEFORE THE CITY OF SEATTLE CIVIL SERVICE COMMISSION

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HEARING EXAMINER

Steve Hamai
Appellant

Vs.

City of Seattle Human Services
Department
City of Seattle, Respondent

DISMISSAL ORDER

CSC APPEAL No. 07-01-006

The Executive Director of the City of Seattle, Civil Service Commission hereby enters the following

ORDER OF DISMISSAL

WHEREAS the Office of the Hearing Examiner issued a Decision on December 6, 2007

WHEREAS the Appellant did not file a Petition for Review of the Hearing Examiner's decision (due no later than December 17, 2007).

WHEREAS the Commission reviewed, discussed and voted to affirm the Hearing Examiner's decision, at its December 18, 2007 meeting.

The Civil Service Commission hereby dismisses this appeal with *prejudice*.

Issued this 20th day of *December*, 2007

FOR THE CITY OF SEATTLE CIVIL SERVICE COMMISSION



Glenda J. Graham-Walton, Executive Director

Note: Commission decisions are final and conclusive unless a party of record makes application for a writ of review to the Superior Court of the State of Washington for King County within fourteen days of issuance

**CITY OF SEATTLE
CIVIL SERVICE COMMISSION**

**Affidavit of Service
By Mailing**

STATE OF WASHINGTON }
COUNTY OF KING }

TERESA R. JACOBS, deposes and states as follows:

That on the 20th day of December, 2007, I deposited in the U.S. mail, postage prepaid, a copy of **DISMISAL ORDER** to:

**S. Hamai
c/o Sean M. Phelan, Attorney
Hoge Building, Suite 1200, 705 Second Avenue
Seattle, WA 98104**

And copies of same via interdepartmental and U.S. mail addressed to:

Mark McDermott, Director, Personnel Department
Patricia McInturff, Director, HSD
Beverly Yapp, HR Manager, HSD
Sue A. Tanner, Hearing Examiner, Office of the Hearing Examiner

In the appeal of:

Steve Hamai v. City of Seattle Human Services Department

CSC Appeal No. 07-01-006

DATED this 20th day of December, 2007


TERESA R. JACOBS