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CIVIL SERVICE COMMISSION

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**BEFORE THE CIVIL SERVICE COMMISSION
OF THE CITY OF SEATTLE**

In Re the Appeal of:)
)
JERRY KIMBROUGH,)
Appellant,)
vs.)
DEPARTMENT OF PARKS AND RECREATION,)
Respondent.)
)

Case No. 99-01-007

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND DECISION**

Jerry Kimbrough, employee of the City of Seattle Parks and Recreation Department (hereinafter, "the Department") timely appeals his demotion from the position of Construction and Maintenance Equipment Operator to the position of Truck Driver. This matter came on for hearing on August 18 and 19, 1999. Appellant was represented by John Scannell, a legal intern at the Law Offices of Paul King, and the Department was represented by Danford Grant, Assistant City Attorney at the City Attorney's Office. The positions of the parties are as follows:

Parks Department's Position:

The Department contends that appellant was demoted for a variety of incidents, including the following: engaging in "angry verbal outbursts directed at . . . fellow workers, the public, and even school children;" narrowly missing hitting a fellow employee in the head with the backhoe bucket; hitting another employee in the head with a set of tongs attached to the backhoe bucket; as well as past history and prior discipline. The Department contends that its action is based on its concern for

FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND DECISION - KIMBROUGH 1

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1 safety for individuals and equipment, and consequently, a demotion is the most appropriate action to
2 accomplish this goal with the least negative impact on the employee.

3 Appellant's Position:

4 Appellant contends that either he did not engage in the alleged conduct (specifically, the angry
5 outbursts); does not remember some of the events (or that they were not a "big deal"); that others
6 engaged in similar behavior (notably, "near misses"), without being disciplined at all; and that
7 appellant is being scape-goated for safety violations, when the Department routinely fails to enforce
8 safety rules and regulations for other employees, and that he is the victim of a "witch hunt".

9
10 The Hearing Examiner, having heard the testimony and the arguments of counsel, and having
11 reviewed the evidence in this case now makes the following:

12 **FINDINGS OF FACT**

13 1. Appellant Jerry Kimbrough has been a Construction and Maintenance Equipment Operator
14 since January, 1995. Notice of Appeal, testimony of Appellant.

15 2. It is undisputed that appellant received a Reprimand on or about September 21, 1990. The
16 Reprimand was for using abusive language, including shouting and cursing. Appellant agreed that
17 his behavior was unacceptable, and indicated that he was seeking counseling. Exhibit 22.

18 3. It is undisputed that appellant received a one day suspension in August, 1996 for "intentional
19 violation of a regulation, order, or direction given by one's supervisor, in the absence of exonerating
20 circumstances . . . uncorrected inefficiency in the performance of duties of employment . . . improper
21 or unauthorized use of City property or equipment," and, specifically, failure to follow instructions,
22 inability to operate equipment and perform effectively, and for causing excessive repairs to equipment
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26 FINDINGS OF FACT, CONCLUSIONS OF
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and damage to park property. Exhibits 19, 20, and 21.

1 4. Various witnesses testified to appellant's angry outbursts or creating dangerous situations,
2 including the following:

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4 a. At Alki Play Field, in conjunction with a "rolling roadblock", when three cars
5 proceeded through the partially blocked street, appellant approached the last car and proceeded to
6 yell at the driver, waving his hands over her;

7 b. At Dearborn Park school playground, when appellant was on a backhoe, he over
8 excavated and broke some irrigation lines, and a group of children from the school approached, and
9 he gestured and yelled at them;

10
11 c. In general, driving in a Parks Department vehicle on a number of occasions, getting
12 upset and angry, verbally and physically, speaking with profanity at other drivers in traffic;

13 d. At , when a coworker advised him to repark a backhoe on a truck, he started
14 screaming at her;

15 e. When loading clean green into a truck, he was asked on several occasions not to
16 overload the truck, and he would get upset about it;

17
18 f. At a project at Value Village on Cheasty Boulevard, appellant was yelling, using
19 profanity, standing up, waving his arms, getting red in the face; He also failed to follow instructions
20 regarding work he was performing;

21 g. Various incidents of "near misses", as well as actual damage to trees and turf areas,
22 individuals hit by equipment due to appellant moving too fast and/or not being careful, not following
23 instructions or listening to suggestions, and/or appellant losing his temper, yelling at people,
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becoming red in the face;

1 h. Refusal or inability to communicate about a project at the Arboretum, resulting in a
2 poorly done job.

3
4 Testimony of Pat Bradley, Lonnie Lynn Carver, Rosellen Brittenham, James Deymonez, Neal
5 Komedal, Craig Eggleston, Arturo Ortega. Exhibits 9, 10, 12, 13, 14, 15, 16, 17, 18, 23, 24, 25, 26,
6 27.

7 5. The angry behavior, when directed at one co-worker (Pat Bradley), caused her to leave work
8 early and go home. She indicated to management that she no longer wished to work directly with
9 appellant. Testimony of Pat Bradley.

10
11 6. Some coworkers testified that they thought appellant should not be operating heavy
12 equipment, due to his inability to communicate effectively, manage his temper, and his failure to
13 operate equipment safely and carefully, especially in closed areas. Witnesses testified that they or
14 others had complained to management about his behavior. Testimony of Pat Bradley, Lonnie Lynn
15 Carver, Arturo Ortega.

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17 7. No witness other than appellant testified that they had ever seen any other operators hit
18 individuals with equipment. There was testimony that that had not ever occurred. Testimony of
19 Rosellen Brittenham, Lonnie Lynn Carver, appellant.

20 8. Several witnesses testified that they observed incidents of near misses or actual hits by
21 appellant, and that some were not reported to management. Pat Bradley, Rosellen Brittenham,
22 Lonnie Lynn Carver, James Deymonez, Craig Eggleston

23
24 9. Several witnesses testified about appellant's failure to follow instructions in performing jobs,
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26 FINDINGS OF FACT, CONCLUSIONS OF
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or performing poorly due to rushing, not being careful. Testimony of Arturo Ortega. Exhibit 27.

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2 10. Appellant testified that he did hit Craig Eggleston, but that Eggleston "walked into" his line
3 of swing. He further testified that there are "hits" on inanimate objects four or five times per year,
4 and people are hit three or four times a year, and that no one is disciplined unless someone gets hurt.
5 He testified that he either did not remember or did not know about several of the incidents of which
6 he was accused, that he was not aware that he could be disciplined for some of the behavior, that he
7 was unaware that there was anything wrong, or that the problem was "not a big deal". He did not
8 remember hitting Lonnie Carver or Pat Bradley with equipment. Upon examination by the Hearing
9 Examiner, appellant was unable to identify anyone who hit another person with equipment.
10

11 Testimony of appellant.

12 11. Appellant was warned or "coached" several times for the behavior listed above in item number
13 4, although not all of the behavior was written up. Arturo Ortega. Exhibits 8, 9, 27, 32, 35, 37.

14 12. It is undisputed that appellant received a copy of Exhibit 2, "Workplace Expectations for
15 Everyone".
16

17 13. On or about March 17, 1999, appellant was given notice that he would be demoted for:
18 endangering the safety of, or causing injury to, the person or property of another through negligence
19 or intentional failure to follow policies or procedures, and other offenses as detailed in the Results
20 of Fact-finding Hearing and Results of Loudermill Hearing. Exhibit 6.

21 14. The Department has disciplined employees for, *inter alia*, threatening/intimidating behavior
22 (termination); failure to follow directions/intimidating behavior (one-day suspension); misuse of
23 equipment (one day suspension/three day suspension/termination); misuse of City equipment (one
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26 FINDINGS OF FACT, CONCLUSIONS OF
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1 day suspension/three day suspension); poor judgment/inefficient performance (one day suspension);
2 rules violations (twelve hour/ three/five/ten/twenty day suspensions/termination); vehicular damage
3 (five day suspension); and violation of workplace expectations (two/three day suspension,
4 termination). Exhibit 38.

5 Based upon the above Findings of Fact, the Hearing Examiner now makes the following:

6 **CONCLUSIONS OF LAW**

- 7 1. There is no evidence that appellant was a scapegoat or the victim of a witch hunt.
8 2. The Department had just cause to discipline appellant.
9 3. Under the circumstances of this case, which involve safety concerns, demotion is an
10 appropriate discipline.
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12 Dated this ¹⁰ 19th day of ~~August~~ ^{November}, 1999

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14 RHEA J. ROLFE
15 Hearing Examiner, Pro tem.
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DECISION

There was considerable evidence of appellant's numerous failures to be attentive to his assigned tasks, resulting in hits and near misses which could have caused serious injury to coworkers. Appellant's disturbing lack of recollection, minimization of the situations, denial, and attempts to place the blame on others demonstrates almost as much as the acts themselves that he should not be operating heavy equipment. Appellant's representative attempted to place blame on one of appellant's female coworkers, who, he conceded "is very safety conscious", but "overly sensitive". He stated: "Lots of women who are victims of domestic violence report very intimidating behavior, but are not given credence until they are actually harmed" (I assume he meant, "physically"). This statement completely discounts the testimony of this employee, and ignores the testimony of a number of male employees who themselves were actually hit, nearly hit, or witnessed appellant hitting others with equipment. The Department is to be commended for giving credence to its employees and taking action on complaints of temper and angry outbursts.

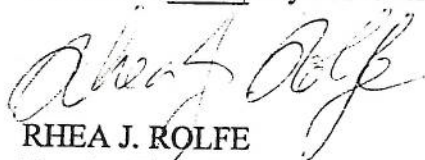
Appellant's representative further stated, "If we start suspending people for near misses . . . there won't be any accidents reported." On the contrary, statistics demonstrate that when people see that complaints are acted upon in the interest of protecting potential victims and keeping people safe, they are more likely to report accidents and other problems, because they can see that their complaints will get results. If anything, the Department was lenient in not giving appellant more coaching and more warnings for his behavior over time.

Safety is and should be a high priority issue, and issues relating to safety, such as good communication between employees, being careful, aware, and attentive to what is going on, and

1 following instructions are important to avoid accidents. All of these issues have been problematic for
2 appellant, along with his temper (which he denies), which itself impedes good communication, with
3 an ultimate impact on safety.

4 The Department had just cause to demote appellant for the behavior identified.

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6 Dated this 10th day of November, 1999

7 
8 RHEA J. ROLFE
9 Hearing Examiner