



CIVIL SERVICE COMMISSION MEETING
CITY COUNCIL CHAMBERS – CITY HALL
#1 CITY HALL PLACE
Tuesday, August 13, 2019
11:00 AM

MINUTES

CALL TO ORDER

Chair Daniel Archibeque called the Civil Service Commission Meeting to order at 11:00 AM.

ROLL CALL

Commission Members Present: Dan Archibeque, Sharon Bonner and Guy Kennedy.

Administrative and Civil Service Staff Members Present: Robert Jagger, Counsel for the Commission; Marisa Pacheco, Humans Resources Director; Manuel Alcala, Civil Service Administrator.

Other interested parties: Butch Batchelder, HR Analyst; Shelby Angus, HR Analyst; Jeff Hawkins, Stormwater Director; City Assistant Attorney Lisa Macchietto; Stephen Dear, Appellant; John Jordan, City Stormwater employee; Fire Chief Barb Huber.

AMENDMENTS TO THE AGENDA

None

READING AND APPROVAL OF MINUTES:

Motion made by Mr. Archibeque to dispense with the reading and approve the minutes for the July 9, 2019 regular meeting as distributed; Mr. Kennedy moved, seconded by Ms. Bonner.

Roll Call -- Ayes: Archibeque, Bonner and Kennedy. Motion carried unanimously.

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CONSENT AGENDA

The following items are considered routine by the Civil Service Commission and will be passed and approved by one motion. There will be no separate discussion of these items unless a Commissioner so requests; in which event, the item shall be removed and considered as a regular item.

1. Receive and file the following status reports on current recruitments:
 - a. **Deputy City Clerk** (Vacancy due to an employee promotion) – The open recruitment began on July 11, 2019 and ended on July 31, 2019. We received 86 applications, and 47 were approved for the exam. The exam is scheduled for August 15, 2019.
 - b. **Engineering Manager** (Vacancy due to an employee promotion) – The open recruitment began on July 21, 2019 and ended on August 10, 2019. We received 6 applications as of the date this agenda was prepared. The exam is scheduled for August 28, 2019.
 - c. **Fire Captain** (Recruitment is to fill anticipated vacancies) – The closed recruitment began on June 13, 2019 and ended on June 26, 2019. We received 33 applications, and all were approved. The written exam was administered on July 12, 2019. The eligibility list was presented to the Civil Service Commission for certification during this meeting.
 - d. **Fire Inspector** (Recruitment is to fill anticipated vacancies) – The closed recruitment began on June 20, 2019 and ended on July 6, 2019. We received 5 applications, and all were approved. The written exam was administered on July 22, 2019. The eligibility list was presented to the Civil Service Commission for certification during this meeting.
 - e. **Lab Analyst II** (vacancy is due to an employee promotion) – The closed recruitment began on June 26, 2019 and ended on July 9, 2019. We received 1 approved application. The Commission authorized a T&E exam that was administered on July 12, 2019. The eligibility list was presented to the Civil Service Commission for certification during this meeting.
 - f. **PC/Network Technician** (vacancy created by an employee promotion) – The open recruitment began on July 24, 2019 and ends on August 13, 2019. We received 20 applications as of the date this agenda was prepared. The written exam is scheduled for August 27, 2019.
 - g. **Street Inspector** (Position created by Staffing Ordinance 9387) – The internal recruitment began on May 26, 2019 and ended on May 8, 2019. We received 12 applications, and all were approved for the exam. The written exam was administered on June 27, 2019. The eligibility list was presented to the Civil Service Commission for certification during this meeting.
 - h. **System Administrator** (Vacancy due to an employee promotion) – The open recruitment began on July 21, 2019 and ended on August 10, 2019. We received 16 applications as of the date this agenda was prepared. The exam is scheduled for August 27, 2019.
2. Ratified the Commission's letter to Lisa Bacon, Joanna Benavidez, and Leslie Seal for the removal of their names from the Accounting Technician IV eligibility list.
3. Ratified the Commission's letters to Edward Archuleta, Marcus Odierno, James Roman, and Jose Uribe for the removal of their names from the Airport Operations/Maintenance Worker eligibility list.

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CONSENT AGENDA (CONTINUED)

4. Ratified the Commission's letters to Sherrie Casarez, Seneca Casias, Charli Cowan, Andrew Douglas, Megan Fortner, Kristina Harris, Melissa Hayward, Kylie Hudgens, Maureen Jones, Amber Martinez, Delilah Porras, Riki Ann Roybal, and Amanda Vigil, for the removal of their names from the Emergency Services Dispatcher eligibility list.
5. Ratified the Commissioner's letters to 32 candidates regarding changes to the scoring and ranking of the Fire Captain examination.
6. Ratified the Commission's letters to Jeremy Clark, Robert James, Bob Lee, Brian K. McKim, Frank Milavec, and Aleksandar Spiridonov for the removal of their names from the PC/Network Technician eligibility list.
7. Ratified the Commission's letters to Jacob Stice and Justin Van Huss for the removal of their names from the Police Patrol Officer eligibility list.
8. Ratified the Commissioner's letter to Dennis Rowland regarding the objection of his appeal regarding the Street Inspector examination.
9. Ratified the Commissioner's letter to Ashley Everetts regarding the rejection of her objection to the removal of her name from the Emergency Services Dispatcher eligibility list.
10. Ratified the Commissioner's letter to Denise Vigil-Bobian regarding her appeal to the rejection of her application for the Deputy City Clerk examination.
11. Ratified the Commission's decision to conduct a Training & Experience Exam on the Lab Analyst II position.

Commission Action: *Motion made by Mr. Archibeque to accept all Consent agenda items; Mr. Kennedy moved, seconded by Ms. Bonner.*

Roll Call -- Ayes: Archibeque, Kennedy and Bonner. Motion carried unanimously.

REGULAR AGENDA

1. Submission of the eligible list for Fire Captain.
Commission Action: *Mr. Kennedy, seconded by Ms. Bonner, moved to approve and certify the eligible list for the class title of Fire Captain.*
Roll Call -- Ayes: Archibeque, Kennedy and Bonner. Motion carried unanimously.
2. Submission of the eligible list for Fire Inspector.
Commission Action: *Mr. Kennedy, seconded by Ms. Bonner, moved to approve and certify the eligible list for the class title of Fire Inspector.*
Roll Call -- Ayes: Archibeque, Kennedy and Bonner. Motion carried unanimously.
3. Submission of the eligible list for Lab Analyst II.
Commission Action: *Mr. Kennedy, seconded by Ms. Bonner, moved to approve and certify the eligible list for the class title of Lab Analyst II.*
Roll Call -- Ayes: Archibeque, Kennedy and Bonner. Motion carried unanimously.

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REGULAR AGENDA (CONTINUED)

4. Submission of the eligible list for Street Inspector.

Commission Action: *Mr. Kennedy, seconded by Ms. Bonner, moved to approve and certify the eligible list for the class title of Street Inspector.*

Roll Call -- Ayes: Archibeque, Kennedy and Bonner. Motion carried unanimously.

ADMINISTRATIVE ITEMS

1. The next regular meeting of the Civil Service Commission was scheduled for September 10, 2019, at 11:00 A.M. The meeting will be held in the City Council Chambers, #1 City Hall Place.

INFORMATIONAL ITEMS

1. Employee Status Report for July 2019
2. Handouts
3. Introductions: Human Resources Director Marisa Pacheco introduced Shelby Angus, the new HR Analyst; and Barb Huber, the new Fire Chief, to the Commissioners.

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HEARING

Appeal from Stephen Dear regarding the termination of his employment (July 16, 2019) as Stormwater Utility Maintenance Supervisor.

For the appellant: Dear represented himself in this matter

Witness for the Appellant: John Jordan, Stormwater Crew Leader

For the City: Lisa Macchietto, Assistant City Attorney; Jeff Hawkins, Director of Stormwater

For the Civil Service Commission: Robert Jagger, Senior Assistant City Attorney

Preliminary City of Pueblo Exhibits were distributed by Lisa Macchietto to the Commissioners, Robert Jagger, and Stephen Dear. Macchietto stated the City had a rebuttal, and asked if Mr. Dear had reviewed the City Exhibits; Dear stated he has.

Macchietto called the first witness, Jeff Hawkins, Director of Stormwater, (witness sworn in by Attorney Jagger) and asked him a series of questions about his (Hawkins) current City job, years in position (5 months), prior City position (Stormwater Coordinator, since July 2015), duties, questions relating to the June 13th incident and City Exhibits 1-8, A-H as follows:

- Exhibit 1: Dear letter explaining incident
- Exhibit 2: Route Map to Meadowlark Airport, Falcon, CO
- Exhibit 3: CO State Patrol Traffic Accident & Summons to John Jordan
- Exhibit 4: Photos of Traffic Accident
- Exhibit 5: Use of City Vehicles guidelines & Signed Safety Meeting Report of Attendance
- Exhibit 6: City of Pueblo Handbook of General Regulations #8 (City Property) and #22 (Professional Workplace Conduct), signed by Dear
- Exhibit 7: Notice of Meeting and Consideration of Disciplinary Action, with attached Exhibits A-H
 - A: Vehicle Accident Photographs
 - B: City of Pueblo Vehicle Operator's Guide Training Log - May 2, 2019
 - C: Tyler/Munis Payroll System Accrual Request Audit Log
 - D: Letter from S. Dear to J. Hawkins dated June 14, 2019
 - E: General Regulation #8 - City Property
 - F: General Regulation #16 - Attendance
 - G: General Regulation #22 - Professional Workplace Conduct
 - H: City of Pueblo Vehicle Operator's Guide - Use of City Vehicles (Page 4)
- Exhibit 8: Disposition of Discipline – Termination of Employment

Hawkins' summary of the June 13, 2019 incident leading to the Appellant's termination:

Dear requested June 13, 2019 off as a vacation day to travel to Peyton, CO to pick up an aircraft he had purchased. Dear arranged for his subordinate employee, Jordan, to accompany him to Falcon. Dear intended to have Jordan drive him in Dear's personal vehicle to Falcon, CO, so he (Dear) could fly the aircraft back to the Pueblo Memorial Airport; Jordan was to drive back to Pueblo; however, Dear's vehicle would not start the morning of June 13th, so he made the decision to use his assigned City vehicle for the trip.

On the drive back to Pueblo, Jordan was involved in an automobile accident in the City vehicle. There was extensive damage to both vehicles, with the City vehicle ultimately totaled. There were injuries to occupants of the other involved vehicle. Jordan was cited as the at-fault driver in the accident and charged with careless driving causing bodily injury following an investigation by the Colorado State Patrol.

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HEARING (CONTINUED)

When asked if he had taken paid leave to assist Dear with his personal business trip, Jordan indicated that he had asked for and was approved for two hours of vacation leave. However, the payroll system audit log showed that two hours of paid vacation leave were entered upon Jordan's return to the City following the accident at approximately 12:50 p.m. on June 13, 2019. The timing of Jordan's time entry into the system, a few hours after the accident certainly caused suspicion.

On Friday, June 14, 2019 Dear sent a letter to Jeff Hawkins detailing the incident, which included Dear's regret of the June 13th decisions, and his acceptance of full responsibility for the entire situation.

On July 16, 2019 a Notice of Disciplinary Consideration (Disposition of Discipline-Termination of Employment) was presented to and signed by Stephen Dear.

Summary of Macchietto's questions to City's witness Jeff Hawkins:

- Why did Appellant Dear drive a City vehicle instead of his personal vehicle? Hawkins replied: Dear said his personal vehicle would not start the morning of June 13th.
- Regarding the traffic accident, who was at fault? Hawkins replied: John Jordan according to the CSP Summons; there was serious injury (facial lacerations, couple broken teeth) to the other person in the car wreck; both vehicles totaled; approximately value of mid-\$20,000 on City's vehicle. The injured party filed a complaint against the City of Pueblo.
- How did John Jordan arrive back to Pueblo? Hawkins replied: via tow truck.
- Regarding City Exhibit. 1, what is the document? Hawkins replied: a letter from Dear provided the day after the accident, admitting guilt. Hawkins stated he then immediately began an investigation into the incident.
- How was the document/citation (City Exhibit 3) provided to him? Hawkins stated he received a copy of the citation/traffic report via email from the Pueblo Police Dept.
- What is City Exhibit 7? Hawkins replied: Notice of Disciplinary consideration he prepared, dated June 19th. In the letter Hawkins requested June 28th hearing with Dear; Dear appeared and made a statement. After the hearing, Hawkins considered the policies that were cited in the Notice.

Attorney Macchietto requested that Hawkins explain the following Exhibits one-by-one:

- City Exhibit 8: Hawkins replied: he provided the document to Dear, stating the June 19th hearing resulted in findings of policy violations of the Stormwater's Vehicle User's Guide, which states City vehicles are to be used for City business only, and not for personal use.
- City Exhibit 5: Let the Record reflect that Hawkins pointed to Dear's signature on the Monthly Safety Meeting (page 2) employee sign in document.
- City Exhibit 6: Hawkins stated he did not give Dear permission to use City vehicle for personal use. Hawkins was asked his thoughts regarding use of City vehicle for personal use; Hawkins replied: his findings of discipline regarding the distance travel was egregious; gas use was taxpayer provided, cost of vehicles impacted, Stormwater operational budget, insurance loss (insurance won't cover employee using vehicle for personal use); and Dear was using City property for personal use, using a City employee, and providing a bad example of a supervisor.

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HEARING (CONTINUED)

- City Exhibit 6, page 2: Hawkins read the job skills and commitment of City goals. Hawkins stated Dear did not exhibit a level of conduct for an exempt manager. Hawkins had spoken to Dear about his behaviors; Hawkins stated he felt Dear was not a good supervisor (6-10-4, sub. 4) conduct unbecoming a public employee. When asked, Hawkins said he found a violation in that area due to the stated regulation regarding the use of City resources for City use *only*. Hawkins considered the incident theft i.e. use of taxpayers' money for the fuel, vehicle, and not a good steward of the public.

Hawkins concluded his testimony stating that he considered Dear's employment file (statements during hearing, time worked for the City, institutional knowledge of the Stormwater system) before making the decision to choose termination. Hawkins said the decision was very difficult, and that he's very upset; he had to consider his friendship with Dear, respect of Dear's crew, but also looked at this situation through an analogy of a bank's employee theft – there was a loss/breach of trust in Dear as a City employee and City supervisor, as there are expectations of City employees.

Attorney Macchietto clarified that Hawkins' decision to terminate Dear's employment was largely influenced by the lack of trust.

There were no further questions from the City.

Jagger stated to Dear that he has the opportunity to cross examine Hawkins; Dear stated this is a first-time experience (hearing process) and the only thing to mention regarding the theft of gas is that he filled up the City vehicle that morning with the intent to refill it upon return to the City. Jagger informed Dear that this info is more in line with a testimony, not a cross examination. Dear apologized and declined to cross examine the witness.

City rested with respect to rebuttal.

Dear (sworn in by Attorney Jagger) stated as in the previous hearing, he will read a prepared statement, due to his emotions may get the best of him; Dear's statement summary:

- During the week of June 10-14, he made decisions to use a City vehicle to accomplish a personal task, also utilizing a City employee that resulted in an accident outside of City limits. Dear did not feel the details of his decision were not fully acknowledged in the disciplinary action.
- Misunderstanding of leave request, as he had requested four-hour leave, not a full day. It was later brought to his attention that leave requests were for full days only, not partial.
- On June 11, while in route to retrieve his aircraft, he received an email from Hawkins to check out an accident on the Fountain Creek Levee system. Dear aborted trip, drove to the Levee system and found the site area barricaded, as it had been repaired six months prior. When this fact was brought to Hawkins attention, he relayed he had misunderstood the email.
- Plan was to fly the morning due to the upcoming heat and weather conditions.
- A misunderstanding on his part when his own vehicle broke down, and he made decision to use City vehicle.
- A common practice to approve leave request hours after the fact (Jordan).
- Questioned the \$20,000 cost of the City vehicle; but said it's not an excuse.
- He never abused time entry into the payroll system; no indication in pass of abuse.
- His loss of appetite, sleeplessness, general sickness was his awareness to the seriousness of this incident.

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HEARING (CONTINUED)

- This misstep is not indicative of his ethics; was an isolated incident; in his 18 years prior, no disciplinary actions; not expecting excuse of his actions, but chance to explain actions preceding the event; trip pre-meditated – the use of City work truck was not.
- In his letter it seems he was trying to garner sympathy for his statement, he was not. He cannot explain the misstep in his judgement without telling the story in its entirety. He has apologized profusely since the incident.
- Recent deaths of newly-found father and brother played role in his mental decision that day.
- Hawkins was aware Dear was stressed regarding retrieving the aircraft.
- Regarding General Regulation 8: agrees he did violate.
- Regarding Regulation 16 (Attendance): he feels did not violate.
- Regulation 22 (Exhibit G) do not feel he violated that regulation.
- Has been praised by HR numerous times on the job he was doing as Supervisor. HR Director commended him on being proactive as far as researching workplace violence videos that he wanted to show to his staff.
- His record over the last 18+ years is devoid of any disciplinary actions, letters, reprimands, or acknowledgement of wrongdoing.
- Issues brought up before HR and Civil Service in past, where his named was involved (hostile work environment) brought up, charged dropped; he was involved/dated a woman in Stormwater, after he broke relationship off, she brought accusations to HR that was never brought to his attention, so he can't address those issues – other that it didn't happen.
- Twice witnessed prohibited activity in the garage bay (hocker game) by Streets Dept., and brought it to the attention of the Streets Director.
- Given only two hours to resign or be terminated, and having never been in this situation, he sought the advice of Dan Centa Acting Public Works Director.
- Doesn't believe his record was adequately demonstrated to the Mayor by HR; believes negativity is due to the firing of three part-time personnel last year; one was the son of an HR staff member. Believes his firing is a retaliation for the firing of that person.
- He's fully aware of the impact he's made on his crew, the City of Pueblo, and Mayor.
- Respectfully requests the opportunity to be placed in former role and time off without pay. If that can't be aligned, wants termination retracted, and be allowed to resign to go work someplace else.

Dear's testimony concluded.

Macchieto cross-examined Dear regarding:

- How long a City exempt manager? Dear: Three years.
- Exhibit 8: Was he responsible for implementing rules? Dear agreed he showed poor judgement that day (June 13) causing a City vehicle to be totaled.
- Exhibit 2: Time to drive to the Falcon (Meadow Lake Airport); route taken.
- Prior plans/days to retrieve the aircraft, and the assistance of Jordan
- His filing for unemployment; it was denied. State determined Dear was at fault.

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HEARING (CONTINUED)

Stephen Dear called witness John Jordan (sworn in by Attorney Jagger), City of Pueblo Stormwater Utility Crew Leader.

Jordan said he'd like to read a statement on behalf of Stephen Dear.

Attorney Macchieto argued that a character statement/witness is irrelevant. Attorney Jagger said it's up to the Commission to make that call.

Commissioner Dan Archibeque said it is relevant due to the question of trustworthiness in this situation.

Jordan stated that prior to the events that occurred, Dear was a great asset to the department and said that he never had the intent of defrauding the City. Prior to the events in question, Dear maintained an impeccable record and accomplished things previous supervisor had not. His only request was that the Commission receive his statement of good faith on his behalf.

The appellant had no other witnesses and Macchieto did not wish cross examine the witness.

Macchieto called Jeff Hawkins present brief rebuttal testimony. Hawkins stated that Dear was a very valued employee, a great supervisor, and well respected by his subordinates. He did a good job for the City; however, the decision came down to an issue of trust that was breached (hard to get back), and that was why the decision to terminate his employment was made. Hawkins affirmed that his decision to terminate Dear was in no way a retaliatory action, and the decision was purely based on the egregiousness of his conduct and loss of trust.

Commissioner Archibeque addressed Dear saying that he (Dear) did not feel like he violated regulations #8 and #22. Dear responded that he had misspoken earlier and that he understood that he had violated said regulations.

Closing Statements from Macchieto:

Macchieto asked the Commission to sustain the imposition of discipline, a termination based on the egregiousness of using City property to travel far outside of town on a personal errand to retrieve an airplane. Dear inappropriately used City property and City fuel, and he put a subordinate employee in an untenable position of accompanying him; that employee now faces personal liability for the accident he was involved in. The Commission should also consider the City's expectations of supervisors. They are expected to exhibit good judgment all the time, and they have to be trusted to do the right thing, perform to expectations, and set the example.

Dear admitted that he made a bad decision that day. He has apologized to Hawkins and his crew for the actions he made that day and that a valuable lesson has been learned. He was trusted prior to that incident and continued to perform in the weeks after that incident. Dear said that he is one of the few supervisors who exceeds working 40 hours per week to ensure the job gets done.

Commission Action: Mr. Kennedy, seconded by Ms. Bonner, moved to deny Dear's appeal.

Roll Call -- Ayes: Archibeque, Kennedy and Bonner. Motion carried unanimously.

For the record, Jagger stated that Dear was asking the Commission to do something they don't have the authority to do. They have an obligation to determine if there is a violation and they have an obligation to respect management's discretion with respect to the level of discipline, unless it's found to be arbitrary, capricious or unreasonable. Jagger read the written findings in this case (enclosed).

MEETING ADJOURNED: 12:45 P.M.


Chairperson

BEFORE THE CIVIL SERVICE COMMISSION

OF THE CITY OF PUEBLO

IN THE MATTER OF)
)
) DECISION
)
STEPHEN DEAR)

THIS MATTER came before the Civil Service Commission on August 13, 2019 for hearing upon the appeal of Stephen Dear (“Appellant”) with respect to the Notice of Disciplinary Action dated July 16, 2019 resulting in Appellant’s termination from his position as Stormwater Maintenance Supervisor (“Disciplinary Action”).

Jeff Hawkins, Stormwater Director, was present and represented by Lisa Macchietto, Assistant City Attorney. Appellant was present and proceeded without representation.

The Commission has considered the testimony, exhibits and arguments of the parties. The Commission, now being advised, makes the following findings and decision:

1. The jurisdiction of the Commission with respect to the appeal is set forth in Chapters 10 and 12 of Title VI of the Pueblo Municipal Code. Pursuant to said provisions, the Department Head properly notified Appellant of the charges. Appellant timely filed the appeal, and this matter is properly before the Commission. At hearing, the City had the burden of proof with respect to the Disciplinary Action. The Commission may sustain, reject or modify the Disciplinary Action.

2. With respect to the violations charged in the Disciplinary Action, the Commission finds that on June 13, 2019, the Appellant did violate:

a. P.M.C. 6-10-4(3) Violation of Title VI of the Pueblo Municipal Code, Civil Service Rules, department regulations, general regulations, or law (including provisions of City Charter and Ordinance governing employment) specifically General Regulation# 8 City Property, General Regulation# 22 Professional Workplace Conduct and City of Pueblo Vehicle Operator's Guide - Use of City Vehicles.

b. P.M.C. 6-10-4(4) Conduct unbecoming an employee of the City.

3. With respect to the level of discipline, the choice of discipline is properly a subject of management discretion, and the Commission does not reverse management’s decision lightly. The mere fact that the level of discipline imposed by management might differ from or be more severe

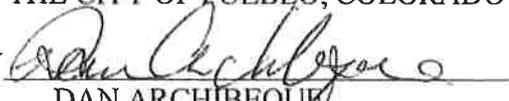
than that which the Commission might choose does not justify changing that discipline. Based on all attendant circumstances, the Commission does not find that the discipline imposed was arbitrary, capricious or unreasonable, and the Commission sustains the termination without modification.

IT IS THEREFORE THE DECISION OF THE CIVIL SERVICE COMMISSION OF THE CITY OF PUEBLO, COLORADO, that the termination of Stephen Dear is hereby sustained.

The above Findings and Order were done in open session of the Civil Service Commission of the City of Pueblo, Colorado, on the 13th day of November, 2019, by vote of 3 to 0.

THE CIVIL SERVICE COMMISSION
OF THE CITY OF PUEBLO, COLORADO

BY


DAN ARCHIBEQUE
Chairman