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2
3 BEFORE THE CIVIL SERVICE COMMISSION
4 FOR THE CITY OF SEATTLE
5
6

7 Jo Ann Scherer,)
8)
9 Appellant) CSC No. 11-01-014
10)
11 Vs.) FINDINGS OF FACT,
12) CONCLUSIONS OF LAW
13 City of Seattle, Department of Finance,) AND DECISION
14 and Administrative Services)
15)
16 Respondent)
17 _____)
18

19 **BACKGROUND**

20 Jo Ann Scherer is employed as a carpenter in the Facilities Unit of the Department
21 of Finance and Administrative Services (“FAS”). On June 7, 2011, Ms. Scherer was
22 involved in a multiple car accident while operating a City of Seattle vehicle on the job.
23 Three vehicles were damaged and there were personal injuries.

24 Following an investigation of the accident by FAS, Ms. Scherer received a 3-day
25 suspension. Ms. Scherer filed a timely appeal with the Seattle Civil Service
26 Commission in which she alleges that the suspension violated “Personnel Rule 1.3.3C.4
27 (Progressive Discipline)” and “Personnel Rule 1.3.4B”.

28
29 **ISSUES PRESENTED**

- 30 (1) Was there Justifiable Cause for the 3-day suspension?
31 (2) Did the 3-day suspension violate the City of Seattle Personnel Rules?

32
33 **FINDINGS OF FACT**
34

- 35 1. These factual findings are based on the testimony of witnesses who appeared
36 and exhibits offered and admitted into evidence during the Civil Service
37 Commission appeal hearings held on November 7th and November 15th, 2011.

- 1 2. Ms. Scherer has been employed by the City of Seattle as a Carpenter since 1985
2 and has an impressive record of involvement in Safety within her department
3 related to hazardous waste, asbestos training, use of power tools, seismic
4 bracing, mandatory safety training, post-earthquake building safety surveys, tool
5 safety, shop clean-up, and West Nile Virus coordination.
- 6 3. On June 7, 2011, Ms. Scherer was driving her City of Seattle Van southbound
7 on 12th Avenue, on a wet road in stop and go traffic. Ms. Scherer was returning
8 to the FAS shop from a job she had completed. Ms. Scherer looked in her rear
9 view mirror and when she looked forward again, she realized that the vehicle in
10 front of her had stopped. Ms. Scherer applied her brakes but the Van did not
11 stop and slid into the rear of the vehicle in front of her and, the vehicle in front
12 of her hit the vehicle in front of it.
- 13 4. All three vehicles pulled to the side of the road and Ms. Scherer called the FAS
14 office. Her immediate Supervisor, Mark Gallo, was not available to take her
15 call, so someone spoke to her Manager, John Sheldon, who instructed Ms.
16 Scherer to fill out the City Collision Report located in the Van's Vehicle
17 Accident Packet.
- 18 5. A Vehicle Accident Packet and often a camera, is placed into all City Vehicles
19 when they are placed into service. The packet includes Vehicle Accident
20 Instructions, which are 10 steps that must be followed by City employees who
21 are involved in auto collisions. City employees are trained on the following
22 steps at least once a year: "(1) stop Immediately to investigate; (2) protect the
23 scene of the accident to prevent further injury or damage; (3) give first aid to
24 injured personnel; (4) medical aid and police assistance are available through
25 your dispatcher by radio, or by dialing 9-1-1; (5) report the accident to your
26 dispatcher or immediate supervisor by radio or telephone as soon as possible;
27 (6) obtain the names and addresses of any witnesses. Use the City of Seattle
28 Witness Cards, CS Form #25.76, in this envelope; (7) fill out a City of Seattle
29 Report of Accident, CCS Form #25.29, at the scene of the accident. Record all
30 information including specific damages, location of skid marks, etc.; (8) do not
31 discuss the accident with anyone except police, a Department supervisor, Safety

1 Officer, or representative of the City Claims Office. Do not discuss the accident
2 in the presence of other parties involved; (9) return completed forms to your
3 immediate supervisor; (10) if the accident results in injury, or damage to one
4 person's property exceeding \$500.00, you must request a Police investigation at
5 the scene, and file a State of Washington Motor Vehicle Collision Report within
6 24 hours."

7 6. Ms. Scherer went through the Vehicle Accident Packet, called FAS to report the
8 accident, but could not speak to her immediate supervisor; received instructions
9 about how to proceed; provided claims forms to the other drivers, asked the
10 passengers in the other vehicles whether anyone was injured and because she
11 was told that no-one was injured, she did not call the police; exchanged some,
12 but not all required information with the other drivers; took photographs of the
13 other vehicles, including license plates; and returned to the FAS shop. Ms.
14 Scherer gave the information to her immediate supervisor, Mr. Mark Gallo, the
15 following morning.

16 7. Ms. Scherer did not follow all 9 steps. She did not call the Seattle Police
17 Department to report the accident, did not immediately prepare a Washington
18 Collision Report, and did not get all of the personal information from the other
19 drivers. Ms. Scherer took photos of the accident, but mistakenly failed to
20 provide her camera to FAS when she submitted the other accident related
21 information.

22 8. In addition to the damage to the City Van caused by this accident, it was
23 determined that the vehicle had been previously damaged, which had not been
24 reported to the City. The total damage to the vehicle included the new and
25 previous damages. The damage to at least two of the vehicles involved in this
26 accident, exceeded \$500.00 each.

27 9. On June 10, 2011, Ms. Scherer met with Mr. Gallo and Safety Specialist, Susan
28 Turner and realized that she had not provided all of the information required by
29 the report, including phone numbers and photos.

30 10. During the meeting, Ms. Scherer was also told that she needed to fill out a
31 Washington State Collision report and that she could get a copy of the report at

- 1 any Police precinct. Ms. Scherer immediately went to a police precinct, where
2 she filled out the form and submitted it via certified mail.
- 3 11. On June 15, 2011, Ms. Scherer met with Ms. Turner, Mr. Gallo, Mr. Gary
4 Shutes, a City Claims Manager and Mr. Jeff Skillman, a Business
5 Representative with the Northwest Carpenters Union (“NWCU”). Ms. Scherer
6 is a member of the NWCU.
- 7 12. During that meeting, Ms. Scherer realized that the photos she had taken of the
8 vehicles and license plates were missing. She looked for the camera, which she
9 found in the bottom of her pack and turned it in for development of the photos.
- 10 13. At Mr. Turner’s request, Ms. Scherer took a two hour Fleet Training class on
11 June 22, 2011. Ms. Scherer was evaluated based on 11 Specific Skills and
12 Maneuvers, and scored “3” (Meets Basic Requirements) in five tested areas and
13 “5” (Demonstrated/Exceeds Expectations) in 3 tested areas. A numerical score
14 was not provided in the other tested areas. Ms. Scherer did well in “looking in
15 way ahead”, “scanning mirrors” and “lane changes” categories; but, needed
16 work in the “stopping distance”, “point of no return–traffic lights”, “fot2brake”
17 and “eye2mirror” categories.
- 18 14. On July 5, 2011, Ms. Scherer met with and received a Safety Counseling Memo
19 from Susan Turner, Sr. Safety and Health Specialist. The Counseling Memo
20 was prepared due to Ms Scherer’s personnel work injuries and vehicle
21 accidents. The Counseling Session addressed FAS concerns about the 25
22 accident claims Ms. Scherer had turned in during her over 25 years of service
23 with the City; 3 vehicle accidents in which she was involved the past 6 years
24 and the comment “shit happens” that she made while representing the Carpentry
25 Shop at the Facilities Safety Committee meeting when the topic of monthly
26 accidents in the shops came up on the agenda.
- 27 15. In a letter dated July 26, 2011, Mr. Potter notified Ms. Scherer of his
28 recommendation that she be suspended due to negligent driving, disregard for
29 her safety and the safety of others and failure to follow instructions. Mr. Potter
30 stated that:

1 “On June 7, 2011 you were involved in a car accident while driving
2 southbound on 12th Avenue in stop-and-go traffic on a wet roadway. The
3 impact of the collision was severe and caused extensive damage to your
4 vehicle, the vehicle directly in front of you and damaged another vehicle
5 that was in front of the latter. In addition, two people sustained injuries,
6 one of whom filed a medical claim in the amount of \$50,000.00.”
7

8 16. Mr. Potter describes the statements made by Ms. Scherer in the fact finding
9 meeting held on June 15, 2011, in part, as follows:

10 “In your meeting you indicated that traffic began to move forward and as
11 you began to move your vehicle forward, you became distracted and
12 looked into your rearview mirror. When you turned your attention back to
13 the road you realized that traffic had stopped but were unable to stop your
14 vehicle in a timely manner. This caused you to strike the vehicle directly
15 in front of you with enough force to push that vehicle into the vehicle in
16 front of it, indicating that your speed and following distance did not allow
17 for adequate distance or time needed to stop your vehicle safely.... You
18 said that you didn’t follow the instructions in the vehicle collision packet
19 but claimed that you followed the emergency preparedness card that was
20 in your vehicle. When asked to produce the pictures of the accident, you
21 claimed that you gave the camera to Mr. Gallo; however, Mark indicated
22 that you did not give him the camera. You then said that you gave the
23 camera to Steve Vanderveer; however, Steve also stated that you did not
24 give him the camera.
25

26 I received a vehicle accident report from our Sr. Safety and Health
27 specialist, Susan Turner, dated June 22, 2011. In her report, she indicated
28 that you failed to follow the vehicle collision instructions; you did not call
29 the police; you failed to call your supervisor or safety representative; you
30 did not exchange all the information with the other driver (you failed to
31 obtain vehicle license numbers, drivers license information and the
32 addresses of all parties involved), you submitted an incomplete vehicle
33 collision report; and the pictures of the accident were not turned in until
34 nine days after the accident. Ms. Turner also indicated that you had
35 attended two – four hour safe driving courses presented by EMTA within
36 a five year period. Ms. Turner stated that she had reviewed vehicle
37 collision instructions with staff in Carpenter Shop Safety Meetings and at
38 All Staff meetings at least once a year over the past six years.
39 Furthermore, she indicated that this was your third preventable vehicular
40 accident within the past five years...
41

42 ...Based on the egregious nature of this preventable accident and upon
43 consideration of all other relevant matters related to your negligence
44 and/or intentional failure to follow safety procedures, I am recommending
45 a three day suspension.”

- 1
2 17. Ms. Scherer disputed several of Mr. Potter's statements. According to Ms.
3 Scherer, she attempted to contact her Supervisor, who was off shift when she
4 called; she photographed the license plate numbers and provided them to FAS
5 when she located her misplaced camera; and, this accident was the first, not the
6 third in the past five years. Ms. Scherer explained that the other two accidents
7 were bumps to the mirror and a trailer hitch and that she had received no
8 previous disciplinary actions for her driving.
- 9 18. On August 16, 2011, Ms. Scherer responded to Mr. Potter's recommendation in
10 a Memo to Mr. Podesta. She apologized for the injuries and damages that she
11 caused in the June 7, 2011 accident; attributed her incomplete reporting and
12 skipping item 3 in the Vehicle Collision Instructions as an indication of her
13 distress. She admitted that she failed to call the police, and explained that she
14 had completed the majority of items and that sufficient information was
15 exchanged by the parties to enable them to contact one another.
- 16 19. Ms. Scherer pointed out that the City's Safe Driving Policy includes a provision
17 that "suggests that it is common for people involved in accidents to be
18 traumatized" and states that "Supervisors shall respond or dispatch a department
19 Safety Officer or other management representative to the scene of the collision
20 to verify that the employee has notified the police and to oversee, conduct or
21 ensure completion of the on scene investigation." She also points out that
22 another part of the Safe Driving Policy states that "unit supervisors shall ensure
23 that employees properly notify all applicable personnel and agencies following
24 any vehicle collision, serious or otherwise." According to Ms. Scherer, none of
25 these things happened.
- 26 20. Ms. Scherer explained that on the evening of her accident, Ms. Scherer's crew
27 chief was off shift, so she called the office immediately after the accident and
28 her unit Supervisor, John Sheldon, was informed of the accident by staff.
29 However Mr. Sheldon failed to show up, failed to call the Safety Officer and
30 failed to suggest that she call the SPD. According to Ms. Scherer, he merely
31 said "have her fill out the forms and report to her Crew Chief in the morning".

- 1 21. Ms. Scherer also explained that she made an honest mistake when the black
2 camera she used to take photos of the accident scene fell into the bottom of her
3 black backpack and she did not see the camera inside her pack until several days
4 later.
- 5 22. In connection with the 25 injuries she has reported over a 26 year career, Ms.
6 Scherer pointed out that 10 of the reported injuries were bumps, cuts and
7 lacerations, which cost the City under \$300 each. She explained that she takes
8 every injury seriously and wanted a doctor confirm that she was ok to return to
9 work.
- 10 23. Ms. Scherer reasoned that, by reporting all of the injuries, she was merely
11 complying with the City's efforts to assure a safe work place and the Accident
12 Prevention Policy which states that "All accidents, no matter how minor, shall
13 be reported promptly to the immediate supervisor for evaluation and
14 investigation"
- 15 24. Ms. Scherer also explained that most of the other sprains and strains were to her
16 back; and that, according to an FFD 5-year overview chart of worker
17 compensation claims, back injuries are the most common injury in the City as
18 well as in the carpentry trade.
- 19 25. As for the "unfortunate comment" that she made at the June Safety Meeting,
20 Ms. Scherer says the comment was taken out of context and was "in reference to
21 a news item concerning a van travelling over the Ballard Bridge" and not a
22 reference to her vehicle accident or a characterization of her safety attitude and
23 behavior.
- 24 26. Ms. Scherer stated that she was "blindsided" by the recommendation for a 3-day
25 suspension because she had received no prior verbal or written discipline
26 regarding her driving. Ms. Scherer described the jump to a 3-day suspension as
27 being contrary to the City of Seattle's progressive disciplinary system.
- 28 27. In a letter dated August 23, 2011, Mr. Podesta, the FAS Director upheld the 3-
29 day suspension based on the following factors: (a) this accident was preventable
30 and was the third preventable accident that Ms. Scherer had been involved in
31 the past five years; (b) Ms. Scherer failed to follow Department and City Policy

1 following the accident and failed to file a police report as required by law until
2 she was told to do so by management; (c) during the course of her career Ms.
3 Scherer has filed 25 personal injury claims; (d) received a verbal warning in
4 2008 for failing to follow fall protection safety procedures; and (e) blurted out
5 “shit happens” during a safety committee meeting while the Safety Specialist
6 was reviewing current workplace accidents. As stated in previous paragraphs,
7 some of these factors are disputed and explained by Ms. Scherer.

8 28. Mr. Podesta clarified that Ms. Scherer’s statements that “the road was wet” and
9 that she was “looking in the rear view mirror” do not absolve her of
10 responsibility for accident. He also took into consideration the thousands of
11 dollars of damage to the vehicles involved in the accident and that personal
12 injuries were caused.

13 29. In upholding the recommended three day suspension, Mr. Podesta expressed his
14 expectation that Ms. Scherer understands and grasps the importance of safety in
15 the workplace, working safely and following procedures to minimize risks to
16 her safety and the safety of others. Mr. Podesta also cautioned Ms. Scherer that,
17 if her commitment to working in a safe manner does not improve, she will be
18 subjected to further disciplinary action, up to and including termination of her
19 employment with the City of Seattle.

20 30. On September 28, 2011, Ms. Scherer filed this appeal with the Seattle Civil
21 Service Commission. At the hearing Ms. Scherer argued that (a) the progressive
22 discipline requirements of Personnel Rule 1.3.3C4 were not applied consistently
23 because the suspension is not related to the seriousness of her conduct and her
24 previous disciplinary history; (b) the 3-day suspension did not adhere to
25 Personnel Rule 1.3.4B because it did not properly consider her employment
26 history and past discipline, the extent of injury, damage or disruption caused,
27 her intent; or, whether her conduct was a breach of fiduciary responsibility or
28 the public trust; and that, (c) allegations in the recommendation and suspension
29 letters are inaccurate.

30 31. Personnel Rule 1.3.3 “Order of Severity of Disciplinary Action” provides at
31 section C.4 that:

1 “A regular employee may be suspended, demoted or discharged only for
2 justifiable cause.” This standard requires, in part, that “4. The rule, policy
3 or procedure and penalties for the violation thereof are applied
4 consistently.” Personnel Rule 1.3.3C.4
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6 32. Personnel Rule 1.3.4B provides that:

7 “B. In determining the level of discipline to impose, the appointing
8 authority or designated management representative shall consider factors
9 that he or she deems relevant to the employee and his or her offense,
10 including but not necessarily limited to:

- 11 1. The employee’s employment history, including any previously
12 imposed disciplinary actions;
- 13 2. The extent of injury, damage or disruption caused by the
14 employee’s offense;
- 15 3. The employee’s intent; and
- 16 4. Whether the offense constituted a breach of fiduciary responsibility
17 or of the public trust.” Personnel Rule 1.3.4B
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20 33. Ms. Scherer did not appeal the City’s decision to consider her conduct to be a
21 “Major Disciplinary Offense”, under Personnel Rule 1.3.4A.13, which provides
22 that:

23 “A. The following is a nonexclusive list of major disciplinary offenses
24 where a verbal warning or written reprimand will not be appropriate, in
25 the absence mitigating circumstances:

26
27 13. Endangering the safety of, or causing injury to the person or property
28 of another through negligence or intentional failure to follow policies or
29 procedures.”
30

31 34. On the issue of consistency, Ms. Scherer provided a report showing that within
32 the past two years, FAS has given “verbal warnings” to employees involved in
33 motor vehicle accidents on August 4th, July 14th and January 21st, 2011; and,
34 “written warnings” to employees involved in motor vehicle accidents on March
35 9, 2011, February 10th, 2011 and August 28th, 2009. The report does not
36 provide a detailed explanation of the circumstances of each accident, the
37 employees’ prior disciplinary and employment history, or mitigating
38 circumstances that may have been taken into consideration.

39 35. Within the past two years, FAS imposed “no discipline” on employees involved
40 in motor vehicle accidents on December 27, 2010, November 14, 2009,

1 November 4, 2009, October 12, 2009, August 12, 2009, May 11, 2009, May 1,
2 2009 and March 5, 2009. Again, the report does not provide a detailed
3 explanation of the circumstances of each accident, the employees' prior
4 disciplinary and employment history, or mitigating circumstances that may have
5 been taken into consideration.

6 36. Ms. Scherer also provided a summary of FAS Discipline for Safety Violations,
7 which includes 13 incidents, including: (1) a safety incident involving driving
8 equipment before doing a safety walk-around (2005, verbal warning); (2) a third
9 safety incident involving driving a vehicle in which the driver failed to properly
10 secure a truck auxiliary engine hood, which struck the C/S building (2006,
11 written reprimand); (3) an incident in which an overhead crane impacted the fly
12 section of an aerial ladder (2008, written reprimand); (4) a failure to report and
13 stop an unsafe act of a co-worker (2010, verbal warning); (5) not following
14 proper safety procedures resulting in an incident causing his injury (2009,
15 verbal warning); (6) two accidents (2009, verbal warning); (7) disregard of
16 responsibility under Workers Compensation Guide (2005, verbal warning); (8)
17 inappropriate Behavior, car bumper nudging incident (2005, written reprimand);
18 (9) failure to follow safety procedures with Fall Protection (2008, verbal
19 warning); (10) inappropriate action which created a hazardous waste (2005,
20 written reprimand); (11) unsafe work practice, disregard for safe work practices
21 and endangerment of others (2010, written reprimand); (12) failure to follow
22 established procedures with Fall Protection, safety procedures (2008, verbal
23 warning); (13) failure to ensure employees are following the proper fall
24 protection procedures (2008, verbal warning).

25 37. In November, 2008, Ms Scherer received a verbal reprimand due to her failure
26 to follow the proper procedures with Fall Protection, which Ms. Scherer
27 believes should not be considered in evaluating appropriate discipline in this
28 matter.

29 38. The Seattle Finance Department's Vehicle Accident Prevention Policy ("VAP")
30 was adopted on March 15, 2001. Section 2.1 of the VAP defines the term
31 Accident as "An unplanned but predictable event caused by an unsafe act or

1 condition (or both) involving injury or property damage.” Section 2.5 of the
2 VAP defines the term Serious Vehicular Accident as “A vehicle accident in
3 which occupants of either vehicle or pedestrians sustain injuries or either
4 vehicle or other property incurs substantial damage.” Section 4.2 of the VAP
5 requires employees to “...exercise due diligence to drive safely and to maintain
6 the security of the vehicle and its contents.” Section 6.1 of the VAP requires
7 employees to “...report any accident...or damage involving a City-owned
8 vehicle...to their supervisor, regardless of the extent of damage or lack of
9 injuries. Such report must be made as soon as possible, but no later than forty-
10 eight hours after the event....” Section 6.2 of the VAP requires an involved
11 employee ...to summon law enforcement (City or County police, or Washington
12 State Patrol) to the scene of the accident to conduct an on-scene investigation
13 and report in order to protect the City against invalid and fraudulent
14 claims....Employees must also complete all required City and State vehicle
15 accident report forms...”

16 39. Section 3.6 of the Seattle Department of Finance Accident Prevention Policy
17 adopted on March 1, 2002 states that:

18 Supervisors shall investigate all accidents, incidents or unsafe acts.
19 Corrective Action or Discipline will be initiated in all instances were [sic]
20 investigation shows that an employee has a pattern of violating safe work
21 practices, safety policies or procedures that resulted in, or could have
22 resulted in an injury to him/her or to another person. Under no
23 circumstances should an employee receive Corrective Action/Discipline
24 solely because he/she had an accident.
25

26 40. In the FAS, Safety Committee Meeting Minutes dated July 20, 2011; Jo Scherer
27 shared with the committee members that she learned in Swerve class: “If you
28 see vehicle tires in front of you, stop.” “Foot to brake = eye to mirror.”

29 41. Ms. Scherer contends that her 3-day suspension should be mitigated
30 because the facts upon which the suspension is based are ”overstated”
31 “exaggerated”, “distorted” and “unexamined.”

32 42. Ms. Scherer describes the 3-day suspension as disproportionate because FAS:
33 (a) “overestimated” the claim by stating that “the impact was severe and caused
34 extensive damage”; (b) “was exorbitant” in its statement that there were “two

1 injuries” rather than only one injury; (c) relied on an injured party’s
2 “exaggerated \$50,000 value in the claim for damages”; (d) incorrectly stated
3 that Ms. Scherer had received “extensive training”, when she had received only
4 a “paltry amount of actual training” in fulfilling city and state requirements;
5 (e) incorrectly “distorted” Ms. Scherer conduct by saying that she did not call
6 for assistance; and, (f) further “distorted” her conduct by considering her “shit
7 happens” comment as a referendum on her commitment to safety.

8 43. Ms. Scherer admits that she: (a) caused the accident on June 7, 2011; (b) should
9 have called the police to the accident scene, as required by the City; (c) did not
10 include the address of one of the parties on the accident report; (d) did not
11 provide the photos along with the accident report; and (e) did not fill out and
12 mail the Washington State collision form until two days after the accident, all as
13 required by FAS, the City of Seattle and/or the State of Washington..

14 44. Any finding herein that may be deemed to be a conclusion is hereby adopted as
15 such.

16
17 **BURDEN OF PROOF**

18 1. FAS has the burden of proving, by a preponderance of the evidence, that Ms.
19 Scherer’s 3-day Suspension was supported by Justifiable Cause (Civil Service
20 Rules 5.31A and 5.31B).

21 2. Personnel Rule 1.3 Progressive Discipline:

22 Personnel Rule 1.3.3 - Order of Severity of Disciplinary Actions:

23 A. In Order of increasing severity, an appointing authority or designated
24 management representative may take the following disciplinary actions
25 against an employee for misconduct or poor work performance:

- 26 1. A verbal warning.
27 2. A written reprimand.
28 3. Suspension up to 30 calendar days.
29 4. Demotion.
30 5. Discharge

31 B. The disciplinary action imposed depends on the seriousness of the
32 employee’s offense and such other considerations as the appointing
33 authority or designated management representative deems relevant. In
34 the absence of mitigating circumstances, verbal warnings or a written
35 reprimand shall not be given for a major disciplinary offense.

- 1 C. A regular employee may be suspended, demoted or discharged only for
2 justifiable cause. This standard requires that:
3 1. The employee was informed of or reasonably should have known the
4 consequences of his or her conduct.
5 2. The rule, policy or procedure the employee has violated is
6 reasonably related to the employing unit's safe and efficient
7 operations.
8 3. A fair and objective investigation produced evidence of the
9 employee's violation of the rule, policy or procedure.
10 4. The rule, policy or procedure and penalties for the violation thereof
11 are applied consistently; and,
12 5. The suspension or discharge is reasonably related to the seriousness
13 of the employee's conduct and his or her previous disciplinary
14 history.
15 D. The appointing authority may suspend an employee with justifiable
16 cause pending the implementation of a demotion or discharge.
17

18 3. Personnel Rule 1.3.4 – Major Disciplinary Offenses (in relevant part)
19

- 20 A. The following is a nonexclusive list of major disciplinary offenses where
21 a verbal warning or written reprimand will not be appropriate in the
22 absence of mitigating circumstances ...
23

24 13. Endangering the safety of, or causing injury to, the person or
25 property of another through negligence or intentional failure to
26 follow policies or procedures.
27

- 28 B. In determining the level of discipline to impose, the appointing
29 authority or designated management representative shall consider
30 factors that he or she deems relevant to the employee and his or her
31 offense, including but not necessarily limited to:
32 1. The employee's employment history, including any previously
33 imposed disciplinary actions;
34 2. The extent of injury, damage or disruption caused by the employee's
35 offense;
36 3. The employee's intent; and
37 4. Whether the offense constituted a breach of fiduciary responsibility
38 or of the public trust.
39
40

41 **CONCLUSIONS**

- 42 1. The motor vehicle collision on June 7, 2011 was caused by Ms. Scherer.
43 2. Under the circumstances, Ms. Scherer's conduct in causing the collision was a
44 Major Disciplinary Offense, within the meaning of Personnel Rule 1.3.4A,

- 1 because the collision: (a) endangered Ms. Scherer's safety as well as the safety
2 of passengers in the other two vehicles; (b) caused injury to at least one
3 passenger in one of the other vehicles and all three vehicles, through Ms.
4 Scherer's negligent operation of the City Van.
- 5 3. Because this motor vehicle collision was a Major Disciplinary Offense, FAS
6 correctly determined that a verbal warning or written reprimand was not
7 appropriate because there are no mitigating circumstances related to the cause of
8 the collision.
- 9 4. FAS' decision to impose a suspension, rather than a demotion or a discharge of
10 Ms. Scherer was reasonable and is supported by justifiable cause.
- 11 5. As a seasoned employee of the City and FAS, Ms. Scherer was informed or
12 reasonably should have known that causing a motor vehicle collision, involving
13 property damage and possible personal injury, could result in disciplinary action
- 14 6. The City of Seattle and FAS rules, policies and procedures related to auto
15 accidents involving City employees and City owned vehicles are reasonably
16 related to both the City's and FAS' safe and efficient operations
- 17 7. A fair and objective investigation produced evidence of Ms. Scherer's
18 violations of several rules, policies related to the operation of the City Van and
19 non-compliance with the several procedures following at the collision.
- 20 8. The rule, policy and procedure for an employee's response to vehicle collisions
21 are consistently applied; however, FAS has failed to meet its burden of proving
22 that penalties for the violation of those rules are consistently applied.
- 23 9. The decision to impose a suspension based on Ms. Scherer's negligent operation
24 of the City Van is reasonably related to the seriousness of her conduct and her
25 previous disciplinary history; however, FAS has not met it's burden of proving
26 that:
- 27 (a) the 3-day suspension is consistent with the penalties imposed in other
28 auto collision cases;
- 29 (b) there are mitigating circumstances in other cases in which no action was
30 taken, or only verbal or written reprimands were given, distinguish those
31 cases from Ms. Scherer's case;

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(c) A 3-day suspension is consistent with the City’s progressive discipline policies, based on Ms Scherer’s earlier disciplinary actions.

10. Any conclusion herein which may be deemed a finding is hereby adopted as such.

DECISION

For the reasons set forth above, the undersigned Hearing Officer finds that a 3-day suspension is not supported by a preponderance of the evidence; and that justifiable cause, consistency and the concept of progressive discipline do support a 1-day suspension of Jo Ann Scherer.

Dated: December 6, 2011

Seattle Civil Service Commission

Christopher E. Mathews *JScherer*

Christopher E. Mathews, Hearing Examiner

**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 12th day of December, 2011, I sent via Electronic Mail, a copy **FINDINGS
OF FACT, CONCLUSIONS OF LAW AND DECISION TO:**

JO ANN SCHERER (APPELLANT)

And copies of same via electronic mail addressed to:

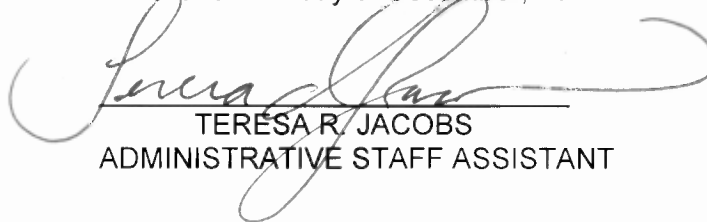
David L. Stewart, Personnel Director
Fred Podesta, Director, FAS
Galen Mauden, HR Director, FAS
Christopher Mathews, CSC Hearing Officer

In the appeal of:

JO ANN SCHERER V. FAS

CSC APPEAL NO. 11-01-014

DATED this 12th day of December, 2011


TERESA R. JACOBS
ADMINISTRATIVE STAFF ASSISTANT

The decision of the Hearing Officer in this case is subject to review by the Civil Service Commission. Parties may also request that the Commission review the decision, by filing a Petition for Review of the Hearing Officer's Decision and asking the Commission to consider specific issues and fact. 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.