

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

LORI HAMAMOTO

File: CSC12-01-004

Appellant,

v.

SEATTLE PUBLIC UTILITIES

Respondent.

Introduction

Lori Hamamoto was suspended for one day from her employment at Seattle Public Utilities and appealed the suspension to the Civil Service Commission. Pursuant to SMC 4.04.250.L.7, the Civil Service Commission delegated the appeal to the City of Seattle Hearing Examiner for hearing and decision.

The hearing on the appeal was held on October 5, 2012 before the Hearing Examiner (Examiner). The Appellant, Lori Hamamoto, represented herself. Seattle Public Utilities (SPU or Department) was represented by Charlene MacMillan-Davis, SPU Labor Relations Coordinator. The record closed on October 10, 2012, when the parties' closing memoranda were due.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code (SMC or Code) unless otherwise indicated. Having considered the evidence and briefing in the record, the Examiner enters the following findings of fact, conclusions and decision on the appeal.

Findings of Fact

1. The Appellant has worked for SPU since 2002, first as an Accountant and then as a Senior Accountant in the General Ledger unit of SPU's Finance division. In 2004, she took over the principal accountant function for SPU's Water Fund.
2. SPU employs three Principal Accountants, each of whom is assigned responsibility for a fund that correlates to one of SPU's lines of business: drainage and wastewater; solid waste; and water.

3. In addition to their work on a specific fund, each Principal Accountant is a subject matter expert in other areas that cross funds. The Appellant handles taxes, and bonds and loans for all funds in addition to her work on the Water Fund. The other Principal Accountants have specialized in different areas, such as MTCA reimbursements, asset management, commercial solid waste review, grants, and deferred charges.

4. The Principal Accountant position is the highest accountant classification in the City. The position "[o]verses the development, modification, and implementation of accounting systems, standards, procedures, financial controls, research and financial analysis and the production and interpretation of financial statements and reports." The position's distinguishing characteristics are "advanced technical competencies, independence of action to perform its assignments, broad scope of responsibility, financial accountability of work products and its overall supervisory, administrative and functional accountability over a major accounting function." "The Principal Accountant is the highest professional accountant level serving as the authority and expert for an accounting operation. The accounting work at this level is the most responsible with significant impacts on accounting systems based on the integrity of information. The Principal Accountant has major responsibility to develop and modify new or revised accounting systems, procedures and financial controls." Exhibit 11.

5. SPU's Principal Accountants are responsible for developing and ensuring the accuracy of the Department's financial statements, which are used by rating agencies to determine each fund's bond rating, and by potential investors to determine whether or not they want to invest in the bonds. Lower bond ratings can result in higher interest rate costs, which must be passed on to SPU's ratepayers. Further, inaccurate financial statements could erode SPU's credibility with potential investors, with elected officials and with the general public.

6. The Appellant performed well in her initial role as an Accountant in SPU, and her work performance was also evaluated as meeting standards in 2004-2005, the year she first took over the Water Fund. Exhibit 1. She was considered good with detail and at accomplishing routine tasks.

7. In 2005, the Appellant's supervisor began having conversations with her about performance concerns, including the Appellant's communications with others, difficulty working with others on her team, the inability to accept feedback on her work, time management, and failure to exercise critical thinking skills in her work, i.e., thinking through a problem, reaching conclusions, and communicating the process to others. These concerns are documented in the Appellant's performance review for 2005-2006 along with suggestions on how the Appellant could make improvements.

8. In 2006, an independent audit determined that many of the Principal Accountants' duties were being performed by the Accounting Manager. Since the Principal Accountants were not fully knowledgeable about all aspects of their funds, they could not assure that they were managed properly. The audit recommended that the Principal Accountants assume oversight and monitoring of complex transactions within their funds.

9. SPU management determined that the duties the auditor recommended for transfer to the Principal Accountants fit within the class specification for the position. Management reviewed the recommendation with the work unit and began providing coaching and training to the Principal Accountants in 2007 to bring their skills and work up to the requisite level.

10. The Appellant's supervisor continued to note problems with the Appellant's work, specifically her knowledge of accounting principles, her judgment, and her communication ability. Her performance review for 2006-2007 notes an inability to step back from the details, see them in a larger context, and provide analysis; a need for collaboration with coworkers to avoid duplication of efforts; a distrust of others' work, and time spent redoing it; a refusal to participate in resolving a conflict with another SPU employee; and an inability to answer direct questions, manifested by failing to answer at all, or answering with information that was off topic or contradictory. The review included suggestions for improvement and suggested training classes. Exhibit 2.

11. The Appellant's supervisor continued coaching her on her performance deficiencies, but her performance review for 2007-2008 showed no improvement. It notes that she works hard but inefficiently; excels at routine tasks but struggles with new tasks, concepts and recognizing errors; lacks a higher level understanding of transaction and variances within the Water Fund; fails to accept responsibility for errors or misunderstandings; fails to discuss with her teammates issues that affect them; and continues to respond to direct questions with a blank stare or taking the conversation off topic. Exhibit 3. An employee development plan is attached to the review, as is a career development plan in which the Appellant stated that her goal was to progress to a strategic advisor or mid-level manager position. Exhibit 3.

12. In the Appellant's performance review for 2008-2009, most sections are marked as not meeting standards. Notations indicate deficiencies similar to those documented in prior reviews, with particular emphasis on the Appellant's unwillingness to assist coworkers, blaming others for errors and criticizing others when they asked questions, refusing help with tasks affecting the Water Fund while insisting she was too busy to take on other tasks, and being unable or unwilling to understand and respond to directions. Exhibit 4. As with prior reviews, an employee development plan is attached.

13. In August of 2009, the Appellant received a Coaching and Counseling Memo that outlined performance expectations and stated that she would be evaluated after October 15, 2009 on performance improvement.

14. The Appellant received a verbal reprimand for "Continued Poor Performance" on November 13, 2009. Exhibit 6 documents the verbal reprimand, which was the first disciplinary action taken against the Appellant. The verbal reprimand states that it is for poor performance in the ability to exercise good judgment, work product and analytical skills, teamwork and knowledge sharing, and communication. Attached to the verbal reprimand is a document containing specific examples, by date, of instances of poor

performance in each area. The verbal reprimand lists resources that the Appellant may access if she believed she was experiencing personal or medical issues that interfered with her ability to meet the expectations for her position. It also stated that continued failure to meet expectations could result in further corrective action "up to and including termination." Exhibit 6.

15. The Appellant's performance review for 2009-2010 shows all areas except "safety" as "Below Standard," and one area as "Unacceptable". The notations indicate deficiencies similar to those documented over prior years and in the verbal reprimand. Exhibit 16.

16. The Appellant received a written reprimand for continued poor performance on August 24, 2010, noting specific instances of poor performance in work product and analytical skills, ability to exercise good judgment, and communication. Attached to the written reprimand was an employee development plan, which was to assist her in meeting performance goals. It included specific due dates for completion of the designated tasks.

17. In June and July of 2011, the Appellant was on approved medical leave for six weeks. When she returned to work, she was given time to transition back into her responsibilities. She also had approval to take intermittent Family Medical Leave while she was still in recovery from her illness. SPU did not receive any information indicating that the Appellant needed a reduced work load.

18. Six months after the Appellant's return, Management determined that her prior performance issues were continuing and decided to reactivate the discipline process. A second written reprimand was issued on March 8, 2012. Exhibit 14. The reprimand cites specific instances of deficient performance in the areas of work product and analytical skills, ability to exercise good judgment and communication. These include a financial analysis that conflicted with findings the Appellant had issued, and failure to produce a requested product after having received step-by-step guidance on it. The reprimand again referred the Appellant to available assistance options. The Appellant prepared a written response to the reprimand, and the response is attached as part of Exhibit 14. Her response disclosed that on some days, she was not fully able to concentrate due to her medical condition and treatment.

19. On April 17, 2012, the Appellant received a letter informing her that the Deputy Director for Finance and Administration was recommending a one-day suspension for the Appellant's "continued failure to meet performance standards in your role as Principal Accountant." Exhibit 7. Following an appeal of the recommendation to the Director of SPU, the Director issued a letter on May 7, 2012 suspending the Appellant for one day. The letter notes that the Appellant did not provide an explanation as to why she believed her management's evaluation was incorrect, but that she had stated that communication issues "could be avoided if others adjusted their way of communicating with [her]." Exhibit 7. This appeal followed.

20. The Appellant has received job-specific training as well as training in such areas as communications and conflict resolution. Exhibits 5 and 12.

21. Because the Appellant was concerned about the disciplinary process, and her ability to complete her work, she seldom took time off. However, after a conversation with her supervisor in April of 2012, she began to take some of her FMLA leave time.

22. In the many conversations between the Appellant and her supervisors about her work, she frequently cited the size of her workload as a reason for deficiencies in the quality of her work. In April of 2012, the Appellant's supervisor asked each of the Principal Accountants to prepare a table listing the tasks they performed in their work and an estimate of the number of hours per month spent, or projected to be spent on each task. The table prepared by the Appellant, Exhibit 9, shows that in a typical month, the Appellant's workload would take between 45 percent and 83 percent of her scheduled work time, including breaks. Exhibit 9.

23. When the Appellant's supervisor compared Exhibit 9 to the tables submitted by the other Principal Accountants, she found that the Appellant's workload required less time than did the workload of the other two Principal Accountants. This is due, in part, to the supervisor's determination that she must give the Appellant more detailed assignments that are short and intense, while giving the other Principal Accountants more complex assignments that require higher level analysis.

24. The Water Fund is the largest and oldest of SPU's Funds. The information needed by the Principal Accountant managing the fund is not always readily available and must be acquired from others or through research of information maintained by the City Clerk. However, the Water Fund has less technical complexity than the Solid Waste and Drainage and Wastewater Funds.

25. The Appellant believes that more work was assigned to her than to the other Principal Accountants, but she also testified that the other Principal Accountants were doing similar additional work. She occasionally requested a reduction in her work load, but did not tie the requests to her need to take her approved FMLA leave. However, her supervisor did remove some of the Appellant's work, including responsibility for Solid Waste tax calculations and for new bonds for all funds. It was not until July of 2012 that the Appellant clearly informed her supervisor that she could not take on work in addition to the Water Fund while recovering from her medical condition. *See* Exhibit 8.

26. The Appellant believes that she was being evaluated on responsibilities that rightfully belong to higher-level positions, such as a Strategic Advisor or Senior Management Systems Analyst. She cites as examples producing reports and working on requirements for SPU's billing system; arbitrage work; sharing information with the Rates Manager; and accounting work that applies across the Department and as being work above the level of a Principal Accountant. The work that crossed the Department included work on the Director's Rule for the annual update of fees, tax issues, and sending explanatory spreadsheets to her supervisor, who had primary responsibility for

the work. Her supervisor testified that none of the work assigned to the Appellant was outside the range of work expected of a Principal Accountant.

27. The Appellant believes that a Principal Accountant should be responsible for a major fund or a major function, such as payables, and should not be responsible for both a major fund and work that crosses funds.

28. The Appellant believes that if she cannot perform effectively in her present position, SPU should have offered her a different position that is better matched to her skills and abilities.

29. Under Seattle Personnel Rule (PR) 1.3.3.C, a regularly appointed employee may be suspended 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.

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 its decision to suspend the Appellant was made with justifiable cause. CSC Rule 5.31.

3. The Appellant has an idea of the Principal Accountant position that is very different from the position described in the classification specification. She maintains an image of the position as it existed prior to the audit in 2006, performing well below the level described in the specification.

4. The preponderance of the evidence shows that the Appellant is not expected to perform functions normally handled by a Strategic Advisor or a Senior Management Systems Analyst. All duties assigned to her fit within the classification specification for a Principal Accountant.

5. The Appellant was counseled on her job performance repeatedly over a period of years. Pursuant to PR 1.5.7, when no improvement was forthcoming, her supervisors moved to progressive discipline. Throughout the progressive discipline process, the

Appellant was informed that her supervisors expected to see immediate and sustained improvement in her performance, and that her continued failure to meet performance standards could result in further disciplinary action, up to and including termination.

6. Although the Appellant does not accept the increased expectations for her job, she reasonably should have known the consequences of failing to improve her work performance.

7. The need for the Principal Accountant's function to be performed in an accurate, understandable and efficient manner is reasonably related to the Department's ability to operate in a fiscally responsible manner.

8. There is clear evidence in the record that the Appellant failed to correct her performance deficiencies over a period of approximately six years and, in particular, after being given a second written reprimand and repeated offers of assistance.

9. On this record, it appears that the requirement that Principal Accountants effectively perform all the responsibilities of the position is applied consistently within SPU.

10. At hearing, the Appellant summarized the basis for her appeal as being the fact that she was disciplined and suspended while on approved FMLA leave. However, the record shows that the Appellant's performance problems began years before the initiation of formal discipline, that the formal discipline process began some 19 months prior to the time the Appellant was on approved medical leave, and that the discipline process was effectively suspended for a time after the Appellant's return to allow her to transition back into her responsibilities. From the record, it appears that the Appellant waited until 8 months after her return, until approximately the time she received notice of the suspension recommendation, to inform her supervisor of her need to take her incremental FMLA time, and nearly a year to inform her supervisor that she could not take on additional work while still in recovery. Although the second written reprimand and suspension occurred while the Appellant was authorized to take incremental FMLA leave, that fact alone does not provide a sound basis for an appeal of the suspension.

11. The one-day suspension is very reasonable in light of the seriousness of the Appellant's performance deficiencies and extensive disciplinary history.

12. The Appellant's interest in a position better suited to her skills and abilities should be directed to SPU; it is not a matter before the Examiner.

13. The Department has shown by a preponderance of the evidence that its decision to suspend the Appellant for one day was made with justifiable cause, and the decision should therefore be affirmed.

Decision

The Department's decision is **AFFIRMED**.

Entered this 18th day of October, 2012.



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.