

**HEARING OFFICER, CAREER SERVICE BOARD  
CITY AND COUNTY OF DENVER, STATE OF COLORADO**

Appeal No. 156-02

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**FINDINGS AND ORDER**

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IN THE MATTER OF THE APPEAL OF:

**BRADY CRENSHAW, Appellant,**

Agency: DEPARTMENT OF SAFETY, DENVER SHERIFF DEPARTMENT, and  
the CITY AND COUNTY OF DENVER, a municipal corporation.

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Hearing in this matter was held before Michael S. Gallegos, Hearing Officer, on February 11, 2003, in the Career Service Hearings Office, 201 West Colfax, 1<sup>st</sup> Floor, Denver, Colorado 80202. Appellant, Brady Crenshaw, appeared and represented himself. Deputy Sheriff Kirk Fouts was Appellant's advisor at hearing. The Agency was represented by Assistant City Attorney, Robert A. Wolf. Major Gary Anderson was the Agency's advisory witness at hearing.

Within these Findings and Order, the Hearing Officer refers to Brady Crenshaw as "Appellant"; the Department of Safety, Denver Sheriff's Department as the "Agency"; Captain Jeff Woods as "Captain Woods"; Sergeant Loren Collier as "Sergeant Collier"; Deputy Sheriffs as "officers"; officers with a rank higher than Deputy Sheriff as "ranking officers" and the Career Service Rules as "Career Service Rules" or "CSR". The Career Service Rules are cited by section number and are those currently in effect unless otherwise indicated.

For the reasons set for the below, the Agency's written reprimand of Appellant, for his actions of June 7, 2002, is **AFFIRMED**.

**ISSUES FOR HEARING**

Whether there is just cause for a written reprimand of Appellant, whether the degree of discipline is reasonably related to the severity of the offense, whether such written reprimand was an adverse employment decision and, if so, whether such adverse employment decision was the result of discrimination based on race and/or political affiliation.

## BURDEN OF PROOF

The burden of proof is upon the Agency to show, by a preponderance of the evidence, that there is just cause for a written reprimand of Appellant, for his actions on June 7, 2002, and that the degree of discipline is reasonably related to the severity of the offense. The burden of proof, regarding Appellant's claim of discrimination, is initially upon Appellant to establish a prima facie case of discrimination based on race.

## PRELIMINARY MATTERS

Appellant's request to subpoena and view the personnel files of Sergeant Collier and Captain Woods was denied by written order dated February 10, 2003.

Prior to hearing in this matter, the Hearing Officer advised the parties of the burden of proof on each issue for hearing. The Hearing Officer explained that, regarding his claim of discrimination, Appellant could establish a prima facie case by presenting evidence that would tend to prove Appellant belongs to a protected class, was qualified for the job at issue, suffered an adverse employment decision and that the circumstances give rise to an inference of discrimination. (See *Colorado Civil Rights Commission v. Big O Tires, Inc.*, 940 P. 2d 397 (1997).) The Hearing Officer noted for the record that Appellant is African-American or Black. The Agency stipulated that Appellant is qualified for the job at issue.

Appellant's Exhibit C was accepted into evidence without objection. Judicial Notice was taken of Appellant's Exhibits A and B, already contained in the hearing file, and of Executive Order 112 regarding Violence in the Workplace. The Agency's Exhibits 1, 2, 7, 8 and 9 were accepted into evidence without objection.

## FINDINGS OF FACT

Based on the evidence presented at hearing, the Hearing Officer finds the following to be fact:

1. Appellant received a written reprimand for his actions of June 7, 2002. After an internal investigation, a pre-disciplinary meeting was held on August 15, 2002. By letter dated August 19, 2002, Appellant was notified of the disciplinary hearing board's decision to issue a written reprimand. He timely filed his appeal of the Agency's decision on August 23, 2002.

2. A written reprimand is a disciplinary action addressed in Career Service Rules.

3. Appellant is an officer assigned to the Denver County Jail. He works the first shift, also known as the first watch, from 1:30 a.m. to 12 Noon. On June 7, 2002, Appellant was assigned to Kitchen Security. The Kitchen Security officer is required to be in the kitchen area once meal preparation begins because there are potentially lethal weapons, such as knives, in use. Meal preparation begins at approximately 4:00 a.m.

4. Before meal preparation began on June 7, 2002, Appellant was at the East End Corridor in the jail. At approximately 4:00 a.m., Sergeant Collier called Officer Hayes at the East End Corridor and asked if there were any other officers there. Officer Hayes told Sergeant Collier that Appellant was there. Sergeant Collier told Officer Hayes to tell Appellant to go relieve "9-Charlie" so the officer there could do the "fence pull". 9-Charlie is cellblock 9-C.

5. A "fence pull" is a security check of the perimeter of Denver County Jail grounds, completed by Denver County Sheriffs officers on duty. At the Denver County Jail there is no officer's assignment, duty or post that is exempt from assignment to fence pull.

6. Officer Hayes advised Appellant that Sergeant Collier wanted him (Appellant) to relieve 9-Charlie so the officer there, Officer Jordan, could do the fence pull.

7. At the Denver County Jail direct orders are routinely communicated from ranking officers on duty to subordinate officers through other officers. The officer relaying the order routinely communicates from whom the order comes to the officer receiving the order. To require that all direct orders be given in person would be impracticable and an inefficient use of ranking officers' time on duty.

8. Deputy Sheriffs or officers do not have the authority to order other officers to perform, or leave, a particular assignment.

9. Appellant did not relieve Officer Jordan from 9-Charlie. He felt that his duties as Kitchen Security prevented him from relieving Officer Jordan at that time. Appellant did not attempt to verify or clarify the order with Officer Hayes or Sergeant Collier. Rather, Appellant willfully did not follow the order.

10. Approximately ½ hour after Sergeant Collier told Officer Hayes to communicate his order to Appellant, Sergeant Collier noticed that the trainees assigned to Officer Jordan were still waiting for Jordan to join them to do the fence pull.

11. Sergeant Collier saw Appellant in the East End Corridor. He hurriedly walked up to Appellant. Sergeant Collier's face was flushed, he appeared to be upset and he started poking his finger toward Appellant's upper

body. In a loud voice, Sergeant Collier asked Appellant, "Where did I tell you to be?" Appellant responded that he did not take orders from Deputies and calmly walked away from Sergeant Collier. Sergeant Collier ordered Appellant to return to where Sergeant Collier was standing. Appellant kept walking. Sergeant Collier then ordered Appellant to the Sergeants' office. Appellant then walked to the Sergeant's office.

12. Sergeant Collier asked Captain Woods to "stand by" while he spoke with Appellant in the Sergeant's office. Captain Woods agreed to do so. Appellant asked Officer Cannon to stay in the Sergeant's office as Appellant's representative. Officer Cannon agreed to do so. When Sergeant Collier asked Appellant why he didn't relieve Officer Jordan, Appellant responded, "because I don't take orders from Deputies". Appellant asked Sergeant Collier how he knew that Appellant was available to relieve 9-Charlie and accused Collier of being prejudiced. Appellant said, "How do you know it was me on the East End, don't we all look alike to you?"

13. Appellant is African-American. Sergeant Collier is white or Anglo-American. When Appellant asked, "How do you know it was me on the East End, don't we all look alike to you?" Appellant was suggesting that Sergeant Collier thinks all Black or African-American people look alike and/or are not worthy of being distinguished from one another.

14. Appellant believes that the June 7, 2002 incident occurred because he is Black or African-American. He believes he was set-up for disciplinary action.

15. During the meeting in the Sergeants' office, there was animated and excited discussion about whether Appellant's duties as Kitchen Security would allow him to relieve 9-Charlie. Neither Captain Woods nor Sergeant Collier differentiated Kitchen Security from Dining Room Officer (DRO) duty. Sergeant Collier dismissed Appellant to return to his assigned post as Kitchen Security.

16. DRO duty differs from Kitchen Security in that the DRO is required to be in the dining area only at times when inmates are present, that is, at mealtime. Kitchen Security must be present during meal preparation, at mealtimes and during clean up from mealtimes whether inmates are present or not. That is, Kitchen Security duty hours are longer, both before and after meals, than DRO duty.

17. Sergeant Collier asked Captain Woods if he (Collier) could send Appellant home. Captain Woods agreed that it would be appropriate but referred Sergeant Collier to Captain Scott, the Captain on Duty.

18. Sergeant Collier went the Captains' office to speak with Captain Scott. Sergeant Collier told Captain Scott that he was going to send Appellant home. However, after Sergeant Collier "cooled down", Sergeant Collier asked Captain Scott if he could send Appellant home. Captain Scott knew that he had enough officers to cover necessary assignments. Therefore, Captain Scott gave Sergeant Collier permission to send Appellant home.

19. The Denver Sheriffs Department is a para-military organization. The officers assigned to the Denver County Jail are assigned specific duties or given orders in order to provide security.

20. If an officer disagrees with an order that has been relayed to him or her, the officer may seek verification or clarification from the ranking officer giving the order or the officer may go to another ranking officer or the Watch Commander. However, to simply ignore the order leaves assignments uncovered and causes a potential breach of security.

21. A breach of security at the Denver County Jail could lead to an escape by inmates or could precipitate injuries to inmates, officers or other jail staff, for example in an escape or a terrorist attack.

22. Actions that lead to a potential breach of security are considered serious in that such actions are contrary to the duty of officers to provide security. Disobedience to an order relayed in routine fashion causes a breakdown in the process used to provide security at the Denver County Jail. Therefore, disobedience to an order is considered, in and of itself, to be a breach of security.

23. On June 10, 2002, the Internal Investigations unit was assigned to investigate the June 7, 2002 incident involving Appellant. The internal investigation of the June 7, 2002 incident found no evidence of discrimination against Appellant. A recommendation for discipline for inappropriate behavior was given to Division Chief Moore.

24. Appellant never reported any threats or threatening actions toward Appellant by Sergeant Collier.

25. The Agency's disciplinary hearing board considered Appellant's excellent work history in determining whether to impose disciplinary action and, if so, the type and severity of discipline necessary to correct Appellant's behavior. The disciplinary hearing board considered Appellant's actions of June 7, 2002 to be serious, in that his actions affected the security of the Jail. Therefore, the disciplinary hearing board considered suspension but imposed a lesser disciplinary action due to Appellant's work history.

26. The circumstances surrounding the June 7, 2002 incident do not give rise to an inference of discrimination based on race.

## DISCUSSION

1. **Prima Facie case of Discrimination:** Appellant must establish a prima facie case of discrimination by presenting evidence that tends to prove Appellant belongs to a protected class, was qualified for the job at issue, suffered an adverse employment decision *and* that the circumstances give rise to an inference of discrimination. (See *Colorado Civil Rights Commission v. Big O Tires, Inc.*, 940 P. 2d 397 (1997).) In this case, Appellant belongs to a protected class in that he is African-American. The Agency stipulated that Appellant is qualified for the job at issue. Neither party argued regarding the issue of whether a written reprimand is an adverse employment decision under current law. However, the Hearing Officer need not address whether a written reprimand is an adverse employment decision in this case because, based on all the evidence presented at hearing, the circumstances surrounding the June 7, 2002 incident do not give rise to an inference of discrimination.

In his Prehearing Statement, Appellant argues that the incident on June 7, 2002 "was a well-planned set up because of my position as President of the Black Sheriffs and because of previous incidents that have happened between this Captain and Sgts with Black Deputies." However, at hearing there was no competent evidence presented of any previous incidents between Captain Woods or Sergeant Collier and Black officers. Both the testimony and exhibits presented at hearing were limited to a discussion of the June 7, 2002 incident. No other specific actions or incidents were identified for the record at hearing.

Appellant's June 10, 2002 letter or memorandum to Director Oliva begins, "The time has come to inform you about the harassing and abusive treatment that other minorities, the members of the Black Sheriffs and myself have experienced working at the Sheriffs Dept." However, the letter goes on to discuss only the June 7, 2002 incident. (See Exhibit 2.) Hearing testimony regarding racial or discriminatory actions or comments was also limited to the June 7, 2002 incident. (See Findings of Fact, paragraphs 12, 13 and 14.) Appellant made the June 7, 2002 comment. No competent evidence of other incidents, actions or comments was presented at hearing. The Hearing Officer therefore concludes that, even if a written reprimand was found to be an adverse employment decision, there is insufficient evidence from which to infer that the written reprimand was a "set-up" or was in any way related to discrimination based on race or political affiliation. Therefore, Appellant has not met his initial burden to show that the circumstances surrounding his written reprimand give rise to an inference of discrimination.

2. **Just Cause and Degree of Discipline:** In its written reprimand, the Agency alleges that Appellant's actions of June 7, 2002 violated the following rules: CSR 16-50 A (1), (7) and (20) in that Appellant engaged in willful neglect of duty and refusing to comply with the order of an authorized

supervisor which are cause for dismissal or a lesser discipline, CSR 16-51 A (5) in that Appellant failed to observe departmental regulations and failed to comply with the instructions of authorized supervisor which is cause for progressive discipline. Specifically the Agency alleges that Appellant failed to observe Denver Sheriff Departmental Rules and Regulations 200.12 and 300.19 which state, respectively: "Deputy Sheriffs and employees shall not disobey neglect or refuse to obey any lawful order of a supervisor." and "Deputy Sheriffs and employees shall not violate any lawful rule, duty, procedure or order."

In this case, it is clear that Appellant's failure to follow order on June 7, 2002 was willful because he made no attempt to verify or clarify the order or from whom it came. Additionally, Officer Hayes credibly testified he advised Appellant that the order came from Sergeant Collier. No competent evidence was presented to counter Officer Hayes' testimony. If Appellant did not agree with the order, or felt that he could not comply with the order due to his duties as Kitchen Security, his duty was to relay that information to Sergeant Collier or another available ranking officer. He did not do so. Therefore, the Hearing Officer concludes that Appellant's actions of June 7, 2002 were a violation of the Career Service Rules and Agency rules cited by the Agency in its written reprimand. (See Exhibit 9.)

Career Service Rules provide, in pertinent part: "The purpose of discipline is to correct inappropriate behavior or performance. The type and severity of discipline depends on the gravity of the infraction. The degree of discipline shall be reasonably related to the seriousness of the offense and take into consideration the employee's past record." (See CSR 16-10.) In this case, the Agency considered Appellant's past record in determining whether to impose disciplinary action and, if so, the type and severity of discipline necessary to correct Appellant's behavior. The Agency considered Appellant's actions of June 7, 2002 to be serious, in that his actions affected the security of the jail. Therefore, the disciplinary hearing board considered suspension but imposed a lesser disciplinary action due to Appellant's excellent work history. Based on all the evidence presented at hearing, the Hearing Officer concludes that Appellant's failure to obey an order is just cause for discipline and, given the potential breach of security caused by Appellant's actions, the Agency's decision to issue a written reprimand to Appellant for his actions of June 7, 2002 is reasonably related to the severity of the offense.

**3. Appellant's allegation of violations of Career Service Rules:** Appellant alleges that the following Career Service Rules were violated: CSR 16-50 A. 3), 10), 17) and 18). That is, he alleges that Sergeant Collier and Captain Woods engaged in dishonesty, discrimination or harassment (addressed above), conduct which violates the Charter of the City and County of Denver or the Revised Municipal Code and/or violates Executive Order 112 with regard to the June 7, 2002 incident. It is clear there were communication problems on June 7,

2002. (See Findings of Fact, paragraphs 4, 6, 7, 9, 11, 12, 15 and 16.) However, the Hearing Officer received no competent evidence of dishonesty on the part of either Sergeant Collier or Captain Woods and no competent evidence of any specific violation of the Charter of the City and County of Denver or the Revised Municipal Code by Sergeant Collier or Captain Woods. Appellant alleges that Sergeant Collier violated Executive Order 112 regarding workplace violence. However, Appellant never reported any specific instance of workplace violence. The Hearing Officer concludes that while some of Sergeant Collier's actions on June 7, 2002, such as poking his finger at Appellant, may have been inappropriate, such actions did not violate Executive Order 112.

Additionally, Appellant alleges violations of CSR 15-101, 15-102, 15-102E, 15-106, 15-110 A, 15-111 B, 15-112 and 15-120. That is, Appellant alleges discrimination, harassment, intimidation, threats, hostility and retaliation based on his membership in the Black Sheriffs fraternal organization. However, the Hearing Officer received no competent evidence of actions or incidents other than the June 7, 2002 incident. For the reasons indicated above, the Hearing Officer concludes that Sergeant Collier's actions, in response to Appellant's failure to comply with an order, may have been inappropriate. However, Sergeant Collier's actions of June 7, 2002 as reported to the Hearing Officer, do not rise to the level of discrimination, harassment, intimidation, threats, hostility or retaliation.

### **CONCLUSIONS OF LAW**

1. The Hearing Officer has jurisdiction to make and issue Findings, conclusions and Order in this matter.
2. Appellant has not met his initial burden to present evidence that tends to show the circumstances surrounding his written reprimand give rise to an inference of discrimination.
3. The Agency has met its burden to show there was just cause for its' written reprimand of Appellant for his actions of June 7, 2002 and that the level of discipline imposed is reasonably related to the severity of the offense.

### **ORDER**

Therefore, for the reasons stated above, the undersigned Hearing Officer **AFFIRMS** the Agency's decision to issue a written reprimand to Appellant for his actions of June 7, 2002. Appellant's claims of Career Service Rule violations, workplace violence, discrimination and harassment are dismissed.

Dated this 11th day of March 2003

  
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Michael S. Gallegos  
Hearing Officer for the  
Career Service Board.

**CERTIFICATE OF MAILING**

I hereby certify that I have forwarded a true and correct copy of the foregoing **FINDINGS AND ORDER** by depositing same in the United States Mail, postage prepaid, on the 11<sup>th</sup> day of March 2003, address to:

Brady Crenshaw  
12592 E. Elemendorf Pl.  
Denver, CO 80239

I further certify that I have forwarded a true and correct copy of the foregoing **FINDINGS AND ORDER** by depositing same in interoffice mail, on the 11<sup>th</sup> day of March 2003, addressed to:

Robert Wolf, Esq.  
Assistance City Attorney

F.J. Oliva  
Denver Sheriffs Department

