

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

Appeal No. 30-15

DECISION

DANIAL STECKMAN, Appellant,

v.

DEPARTMENT OF SAFETY, DENVER SHERIFF'S DEPARTMENT,
And the City and County of Denver, a municipal corporation, Agency.

I. INTRODUCTION

The Appellant, Danial Steckman, appeals his dismissal from employment with the Denver Sheriff's Department (Agency) on June 2, 2015, for alleged violations of specified Career Service Rules and Agency regulations. A hearing concerning this appeal was conducted by Bruce A. Plotkin, Hearing Officer, on April 22 and May 23, 2016. The Agency was represented by Assistant City Attorney Natalia Ballinger, while the Appellant was represented by Don Sisson, Esq. and Lucas Lorenz, Esq., of the law firm Elkus & Sisson, PC. Agency exhibits 1 – 11, and 15 - 16 were admitted. Appellant exhibits A and B were admitted. Civilian Review Administrator Shannon Elwell testified for the Agency. The Appellant testified on his own behalf during his case-in-chief, and presented no other witness.

II. ISSUES

The following issues were presented for appeal:

A. whether the Appellant violated any of the following Career Service Rules (CSRs)¹: 16-60- A; 16-60 E; 16-60 J; 16-60 O; 16-60Y; 16-60 Z; or 16-60 L., as it pertains to Denver Sheriff Departmental Rules and Regulations (RR) 200.4.2; 200.16; 300.11.6; 400.4.1; 400.5; 400.6; 400.8.1; or 300.19.1 as it pertains to Department Order 2440.1P.

B. if the Appellant violated any of the aforementioned Career Service Rules, whether the Agency's decision to terminate his employment conformed to the purposes of discipline under CSR 16.

III. FINDINGS

The Appellant, Danial Steckman, was a deputy sheriff in the Agency from 1998 until his dismissal in 2015. His duties included the care, custody and supervision of inmates.

On May 7, 2014, Steckman was assigned to relieve the regular housing officer, Deputy Hayes, in inmate residential pod 4E, in the Downtown Detention Center (DDC) for about 45 minutes. As the relief housing officer, Steckman was responsible for stopping improper inmate behaviors, including inmate-to-inmate pat searches which were sometimes used by tier porters (inmates with special privileges) to haze inmates new to the pod. [Elwell testimony]. The Agency maintains a zero-tolerance policy against hazing and requires its deputies to report observed hazing immediately. [Department Order 2440.1P.B.2.b.]. No inmate, including tier porters, is allowed to pat search another inmate.

The housing officer's desk is directly to the left of the entrance to pod 4E from the exercise yard. During the laundry exchange, inmates entered from the yard, and passed by the officer's desk on the

¹ Since this appeal was filed, the Career Service Rules have been revised. Because the previous version of the rules were in effect at the time discipline was assessed, that version controls the outcome in this appeal.

right, turning left in front of the desk, and proceeding out of view of the security recording, [Exhibit 10], toward the laundry exchange area. Steckman remained seated at the officer's desk while inmates filed in, single file, through the door to his right. The actual laundry exchange was about 11 minutes, from 12:39:00 to 12:50:10.

During those eleven minutes, two tier porters, one after the other, directed inmates entering from the yard. The first tier porter stopped two inmates when they passed directly in front of the officer's desk where Steckman was seated. The second tier porter stopped seven inmates as they entered the pod from the exercise yard, directly to Steckman's right. Some inmates engaged in small scuffles with the tier porters, trying to evade being pat-searched. Some were turned toward the desk by the tier porters, and were made to raise their hands above their heads, or put their hands behind their heads. The first inmate who was stopped by a tier porter was a tall man. He was made to raise his arms and spread his legs directly in front of Steckman's desk. The tier porter kicked one of the inmate's feet to increase the spread position, causing the inmate's legs to slide wide apart. [Exhibit 10 @ 12:42:21]. The inmate started to fall and caught himself with his arms on Steckman's desk. He hobbled off to Steckman's right. Steckman never raised his head during the entire incident.² The second tier porter patted down several inmates to varying degrees directly to the right of Steckman. During the entire laundry exchange, Steckman glanced up twice. [Exhibit 10]. If an officer is seated at the officer's desk, the front of the desk blocks the officer's view of the bottom half of inmates standing in front of it. The top-half view is unimpeded and the officer would likely hear an inmate in front of him.

Following an inmate complaint about hazing that day, an investigation ensued. The investigation focused on Hayes' conduct on May 14, 2014, and later expanded to include Steckman. The Agency later placed Steckman on investigatory leave.

One year after the hazing incidents, a pre-disciplinary meeting was held on May 21, 2015. [Exhibit 11]. Steckman attended with legal counsel. On June 2, 2015, the Agency served a notice of termination of employment on Steckman. This appeal followed timely on June 16, 2015.

IV. ANALYSIS

A. Jurisdiction and Review

Jurisdiction is proper under CSR 19-10 A.1.a, as the direct appeal of a termination. I am required to conduct a *de novo* review, meaning to consider all the evidence as though no previous action had been taken. Turner v. Rossmiller, 532 P.2d 751 (Colo. App. 1975).

B. Burden and Standard of Proof

The Agency retains the burden of persuasion, throughout the case, to prove Steckman violated one or more cited sections of the Career Service Rules, and to prove its decision to terminate his employment was reasonable under CSR 16-20.

D. Career Service Rule Violations

1. CSR 16-60 A. Neglect of duty.

To sustain a violation under CSR 16-60 A, the Agency must establish that Appellant failed to perform a known duty. In re Gomez, CSA 02-12 (5/14/12), *citing In re Abbey*, CSA 99-09, 6 (8/9/10). The Agency claimed Steckman violated this rule because he failed (a) to work with the Laundry Officer to

² Steckman may have looked for less than one second toward the tall inmate before the tier porter pat-searched him, [Exhibit 10 @ 12:41:52]; and something out of view of the camera toward the laundry exchange area caused the tier porter, all six inmates waiting by the door, and Steckman, to look toward the laundry exchange for about one second. Exhibit 10 @ 12:42:40]. However, during the entire laundry exchange, Steckman never looked directly in the direction of any pat-down, apparent scuffles, and did not lift his head when the inmate whose legs were kicked out fell and caused the inmate to lean over the desk with his arms, placing his upper body less than two feet directly in front of Steckman. This is not to say he was unaware of what happened or should have been aware by engaging in a reasonable degree of attentiveness to his duties. See note 3.

conduct laundry exchange or ensure a one-for-one exchange was completed, as required by post order, below; (b) to act in the face of multiple pat searches by tier porters, one of which resulted in physical injury; (c) to protect inmates from harming others, and therefore neglected to protect inmates from harm by others; (d) to be alert, thereby permitting an atmosphere to exist where searched inmates were subject to abuse by tier porters; (e) to intervene despite protests from multiple inmates thereby implicitly encouraging prohibited activity directly in front of him; (f) to be alert to imposition of humiliation and indignities on inmates; (g) to respect or protect inmates' rights; and (h) to assure the safety and security of inmates to keep them free from harassing behavior including physical abuse. [Exhibit 2-14 through 2-16; Elwell testimony]. Steckman acknowledged his duty to survey the pod and to prevent and stop inmate wrongdoing. This rule includes improper inmate conduct of which Steckman should have been aware, but was not.³

The most convincing evidence was the partial recording of the activity in pod 4E on May 14, 2014. The recording showed pat-searches, partial pat searches, or substantial interference with an inmate's movement by two of the tier porters, in front or to the side of Steckman, while he was seated at the officer's desk. Those searches occurred at the following times, according to the time-stamped recording, Exhibit 10.

12:42:19
12:42:46
12:43:05
12:43:55
12:44:06
12:43:44
12:45:46
12:45:53
12:45:56
12:47:05
12:48:07
12:48:43
12:48:47
12:49:03

(a) Working with the Laundry Officer to conduct laundry exchange. The Agency's evidence regarding this violation of CSR 16-60 A. was not evident. The security recording made it evident Steckman did little, if anything to effect or assist in the laundry exchange; however it remains unknown if he did enough either prior to, after or during the period of the recording to determine, by a preponderance of the evidence, whether he assisted in the laundry exchange, or to what degree. This allegation fails for lack of evidence.

(b-h) The remainder of the Agency's claims may be summed up as the failure to monitor for wrongdoing, to stop wrongdoing, and to protect the safety of inmates. It is apparent from several of the Agency's rules and orders that deputies are required to conduct active surveillance of inmates in their residential pods. [D.O. 2440.1P 7. A. 11 (being proactive rather than reactive); D.O. 2440. 1P B. 7. (assure safety and security as part of effective job performance); D.O. 2440. 1P 8. B. 2. C. (any DSD member who perpetrates, is found to have encouraged such conduct, or fails to report such conduct is subject to discipline up to and including termination); Van-Cise Simonet Housing Post Order IV – General Duties and Responsibilities (making rounds to ensure the housing unit is safe, secure, free from maintenance problems, fire hazards, security concerns, and unusual inmate behavior); RR 400.8.1 (Deputy sheriffs and employees shall be alert at all times to protect prisoners from harming themselves,

³ Compare hazing rules, below, with violations under this rule. Hazing violations include failing to stop and report observed inmate hazing, whereas this rule renders a deputy liable for not being aware such conduct exists under circumstances where he or she should have been aware. Thus, a deputy may not avoid responsibility to stop and report wrongful inmate behavior under his or her watch, by blithe indifference. Deputies have an affirmative duty to prevent, watch for, and stop wrongful behavior. [DSD Discipline Handbook, Appendix A, Mission Statement].

harming others, or attempting suicide). During the entire laundry exchange on May 7, 2014, Steckman barely looked up and never reacted to evident hazing going on directly in front of and to the side of him.

Steckman's responses were inexplicably inconsistent and therefore lacked credibility. He testified he had worked with Hayes before and was aware Hayes ran a pod that was "kind of crazy." [Steckman testimony]. Yet, Steckman later told IAB "if I had known he had allowed this... we could have made a complaint... but I just didn't know." Thus, on one hand, Steckman affirmed he already knew Hayes permitted an undisciplined pod, yet feigned surprise to witness it when he worked there.

In another inconsistency, Steckman claimed the pod was "pandemonium," "kind of crazy," and "out of control." He claimed to be wary of being in the midst of 60 inmates, being attacked from behind, and having to monitor many inmates' activities all around him, as he expressed in the following testimony.

I wasn't able to give every inmate my attention simultaneously. 60-something inmates, plus laundry exchange, plus they're behind you, plus there is a radio phone and computer. It's not possible to stop all horseplay in a pod for the same reasons. All the inmates are running games to try to get ahead of the deputy. You control what you can control. If you wanted to control a pod like that 100%, you would need 2 or 3 deputies to cover every angle, walking around, talking to them... having 60 inmates behind you is a concern.

[Steckman testimony, cross-exam].

Despite Steckman's concern about chaos in the pod, being severely outnumbered, and being wary of being attacked from behind, Steckman behaved, as viewed from the security camera recording, in an entirely unconcerned manner, as he seldom looked up from his computer monitor during the entire laundry exchange, in marked contrast to his stated concerns.

Steckman also claimed that, as a relief officer, he was not in a position to change the culture of the pod in the little time he was there. However, Steckman acknowledged "I don't think a relief officer is held to a different standard than a housing officer." [Steckman cross-exam]. For all these reasons, Steckman had an acknowledge duty to be vigilant to watch for and stop wrongdoing and to safeguard the security of inmates occurring in the inmate pod where he worked on May 7, 2014. After becoming aware⁴ of at least two instances of evident hazing, he ignored that wrongdoing, then failed to monitor the pod for any additional activity in violation of CSR 16-60 A. This same neglect, for the same reasons as stated herein, also establishes violations of DSD RR 400.5 – Harassment of Prisoners; DSD RR 400.6 – Abuse of Prisoners; and DSD RR 400.8.1, Protecting Prisoners from Physical Harm.

The Agency also claimed Steckman's dishonesty during the IA investigation was a violation of his duty to be honest. [Elwell testimony]. The violation of another Career Service Rule, does not automatically violate this rule. The Agency's view of CSR 16-60 A. as a separate harm for violating another rule would impermissibly double almost all other rule violations. In re Robinson, CSA 03-13, 4 (6/18/13); see also In re Mitchell, CSB 57-13A, 3 (11/7/14). No violation of CSR 16-60 A. is established by this allegation.

2. CSR 16-60 E. Any act of dishonesty, which may include, but is not limited to:

- 1. Altering or falsifying official records or examinations;**
- 2. Accepting, soliciting, or making a bribe;**
- 3. Lying to supervisors or falsifying records with respect to official duties, including work duties, disciplinary actions, or false reporting of work hours.**

⁴ I use the word "aware" instead of "observed" because, in the first instance of hazing, cited above, Steckman did not apparently lift his eyes to see the inmate falling on his desk, but, in the absence of wearing ear plugs and blinders to block entirely his peripheral vision, he, more likely than not, was aware of the inmate falling violently onto the desk mere inches in front of him. In the second instance, he glanced toward the second tier porter wrestling for control of another inmate.

Dishonesty is established by any knowing misrepresentation within the employment context. In re Rodriguez, CSA 12-10, 7 (10/22/10), *citing In re Mounjim*, CSB 87-07 (1/8/09). The Agency concluded Appellant made deceptive statements to IA when he stated he saw the African-American tier porter, then claimed he did not. The Agency also claimed Steckman was dishonest when he claimed to have told the tier porters to stop their hazing (“cut that shit out”). Finally, the Agency claimed Steckman saw a pat search where an inmate was forced to grab the top of the desk to keep from falling, but said he didn’t recall it, despite earlier saying he remembered the tier porter conducting searches.

(a) Whether Steckman saw the African-American tier porter.

At various stages of the case, Steckman claimed he did or did not see the African-American tier porter. Steckman’s uncertainty is a reasonable failure to recollect what was an inconsequential detail at the time. The Career Service Board has rejected the notion that inconsistent statements prove an intent to deceive. In re Lewis, 51-14A, 5 (CSB 11/9/15). This Agency claim failed to establish a violation of CSR 16-60 E.

(b). Telling either tier porter to stop misbehavior.

While Elwell was certain Steckman did not say anything to either tier porter based on her review of the security camera recording, I do not find the video is sufficiently clear to state whether Steckman did or did not speak to either tier porter. On the other hand, I find Steckman’s assertion, that he spoke to at least one of the tier porters, no more or less credible than Elwell’s denial, particularly since Steckman, when shown the recording, was unable to state at what point he may have told either tier porter to stop their misbehavior. [Exhibit 9 (Q: “at what point in time during this [recording] do you recall telling the inmates to stop?” A: “I don’t know at what point I did”). Consequently, since the objective evidence is no more persuasive for either side, the Agency failed to prove Steckman lied when he claimed to tell one of the tier porters to “cut that shit out.”

(c) Whether Steckman saw inmate who collapsed in front of him.

Steckman was so close to the inmate who collapsed in front of him, that it is more likely than not he was aware of the occurrence, regardless whether his eyes looked up. Moreover, Steckman acknowledged to IA that he was aware of two or three incidents of what he deemed “horseplay.” Steckman’s term describes the same behavior that constitutes wrongful hazing-by-pat-search. An important indication of this finding is Steckman’s own words. During his IAB interview, Steckman said “like I said, I don’t think I saw more than maybe three guys get searched before I said something.” [Exhibit 9]. Taken together, this evidence proves Steckman was aware of the inmate who collapsed in front of him after a tier porter kicked his legs apart from behind. Whether Steckman viewed the inmate directly or was aware of him through his peripheral vision, hearing and otherwise, is not a distinction that matters to this violation. This agency allegation is proven by a preponderance of the evidence.

3. CSR 16-60 J. Failing to ... do assigned work which the employee is capable of performing.⁵

As a Denver Deputy Sheriff, Steckman’s work duties included intervening to stop wrongful inmate behaviors. He acknowledged inmate-to-inmate pat searches were wrongful behavior requiring intervention. The evidence established that Steckman observed at least two incidents of hazing.⁶ Each of his failures to intervene was a violation of his assigned work as a deputy under this rule.

⁵ Former rule CSR 16-60 J., under which this case was decided, comprised two separate violations: the failure to obey a lawful order of an authorized supervisor, and failure to perform assigned work of which the employee is capable. The Agency cited only the latter in its notice of discipline.

⁶ While Steckman described what he saw as “horseplay,” the distinction is irrelevant as both his nomenclature and the Agency’s definitions included the same prohibited conduct which Steckman was obliged to halt: inmates preventing free movement of others, physically restraining other inmates, putting hands on the body of other inmates, directing and restricting movement of other inmates.

4. CSR 16-60 L. Failure to observe written departmental or agency regulations, policies or rules. The Agency claimed the Appellant violated the following written policies.

RR 200.4.2. – Commission of a Deceptive Act.

In connection with any investigation or any judicial or administrative proceeding, deputy sheriffs and employees shall not willfully, intentionally, or knowingly commit a materially deceptive act, including but not limited to departing from the truth verbally, making a false report, or intentionally omitting information.

The same evidence which established a violation of CSR 16-60 E., above, also establishes a violation under this Agency rule. Steckman's deceptive act was telling the IAB investigator he was unaware of any reportable tier porter misconduct.

200.16 Failure to Perform Duties.

Deputy sheriffs and employees shall not fail to perform the required duties of their assignments.

300.11.6 – Conduct Prejudicial

Deputy sheriffs and employees shall not engage in conduct prejudicial to the good order and effectiveness of the department or conduct that brings disrepute on or compromises the integrity of the City or the Department or conduct unbecoming which:

(a) May or may not specifically be set forth in Department rules and regulations or the Operations Manual; or

(b) Causes harm greater than would reasonably be expected to result, regardless of whether the misconduct is specifically set forth in the Department rules and regulations or the Operations Manual.

The Agency's Conduct Prejudicial rule encompasses conduct well-beyond the scope of the Career Service conduct prejudicial rule, CSR 16-60 Z., which confines wrongdoing to actual harm to the Agency or the City. In re Jones, 88-09A (CSB 9/29/2010). In contrast, the Career Service Board stated RR 300.11.16 prohibits "conduct that might otherwise appear to be minor, yet result in serious consequences or potential consequences." In re Redacted, 31-12A, 3 (CSB 10/3/13). That case dictates that an employee of the Sheriff's Department may be punished for hypothetical harm as well as actual harm. In re Gale, CSA 02-15, 13 (11/23/15).

The Agency claimed Steckman observed, yet failed to intervene in 15 instances of hazing ("occurring before his eyes"). It is not apparent Steckman was aware of more than two or three of those incidents described above. Nonetheless, when Steckman became aware of those two or three instances of hazing, he was under an affirmative duty to guard against subsequent misconduct, particularly knowing, as he did, the reputation of "Hayes" pod as unruly and undisciplined. Under the broad standard of this rule, Steckman's failure to monitor inmate misbehavior in a residential pod he already knew lacked control, foreseeably resulted in an actual harm to one inmate and could reasonably have resulted in liability to the City, both in violation of this rule.

Steckman's protest, that the behavior was not a pat search or hazing, merely horseplay, even if true, did not relieve him of the affirmative duty to monitor inmate misbehavior, particularly knowing it was likely in that pod. Under those circumstances, Steckman failed to prevent greater harm or potential harm than would reasonably be expected to result by the exercise of reasonable diligence in his duties, in violation of this RR 300.11.6. (a)., and (b).

300.19.1 – Disobedience of Rule

Deputy Sheriffs and employees shall not violate any lawful Departmental rule (including CSA rules), duty, procedure, policy, directive, instruction, order (including Mayor’s Executive Orders), or Operations Manual section.

Departmental Order 2440.1P – Human Relations/Code of Ethics and Standards of Conduct

1. Purpose: The purpose of this order is to prescribe a code of conduct for all employees of the Denver Sheriff Department (DSD), its volunteers, and its contractors regarding the treatment of employees, the public, and those individuals [who] have been entrusted to the custody of the Department...

2. Policy: Actions of officers and civilians that are inconsistent, incompatible or in conflict with the values established by this agency negatively affect its reputation and that of its officers. Such actions (or inactions) thereby detract from the Department’s overall ability to effectively and efficiently protect the public, maintain peace and order, and conduct other essential business. Therefore, it is the policy of the Denver “Sheriff Department that staff conduct themselves at all times in a manner that reflects the ethical standards consistent with the rules contained in this policy and otherwise disseminated.

Further, it is the policy of the Denver Sheriff Department that every DSD employee, volunteer, or contractor has the right to work in a professional environment free from discrimination, harassment, hazing, retaliation or intimidation. It is also the Department’s policy that persons with whom we come in contact in the course of performing our duties or otherwise shall enjoy freedom from such discriminatory or harassing behavior. To this end, it is the policy of the Denver Sheriff Department that its staff, volunteers and contractors receive and be familiar with and adhere to the standards of conduct as explained and set forth in this Department Order.

Finally, because public confidence in the integrity of members of the Denver Sheriff Department (DSD) demands that we demonstrate the highest standards of conduct at all times, the Denver Sheriff Department maintains a zero tolerance for violations of any part of this policy.

6. Ethical, moral and lawful standards governing employee conduct: All employees, volunteers, and contractors of DSD are expected to adhere to the standards of conduct described in this Order. In addition, employees should refer to and are expected to abide by the Denver Sheriff Department Rules and Regulations, and any other federal, state or local laws, statutes or regulations governing expected conduct and lawful behavior.

7. Adherence to and Accountability for Delegated Authority: A brief and general description of the duties, responsibilities and the level of delegated authority to effectively accomplish the assigned tasks of each deputy sheriff rank are listed in the Department’s Personnel Manual. The Denver Career Service Authority maintains a current list of job descriptions for all civilian employees, including the level of delegated authority to effectively accomplish the assigned tasks, on the City and County of Denver website. Each employee will be held accountable for the delegated authority described. Also see DSD Rules 330.21.1 and 300.19.2.

A. Denver Sheriff Department guiding Principles (also see Appendix A): Employees of the Denver Sheriff Department, as well as Department volunteers and contractors, should conduct themselves according to the following guiding principles while performing their duties:

1. Being ethical and honest in everything we do or say;
2. Acting with respect to all, including other employees and the public;
3. Treating others as we would want to be treated;
5. Being objective, accessible, tolerant, flexible and adaptable;
7. Encouraging a harmonious, supportive environment, putting the team first and fostering positive working relationships;
8. Recognizing the humanity in others and being able to deal with difficult people and situations with compassion and concern;
9. Making reasonable decisions based on common sense and good judgment;
10. Taking personal responsibility and initiative to get things done;
11. Being proactive rather than reactive;
13. Setting a positive example for others to follow;
14. Having the courage to do the right thing;
16. Being accountable for everything we do;
17. Striving for excellence and continued self-improvement;
18. Demonstrating skill, knowledge and competency in carrying out all assigned duties.

B. Professional Standards of Conduct: All Department employees, contractors and volunteers shall adhere to professional standards of conduct and ethical code, including but not limited to the following:

1. Follow all jail policies, procedures and directions;
3. Observe restrictions on the use of force; not subjecting inmates to sexual, emotional or physical abuse or the use of unnecessary levels of force;
4. Respect and protect inmates' rights;
7. Assure safety and security as part of effective job performance;
9. Cooperate in investigations conducted by the Internal Affairs Bureau (IAB) or other law enforcement agencies;

8. Other prohibited Conduct:

400.4.1. – Cruel and Unusual Treatment of Prisoners

Deputy Sheriffs and employees shall not impose, attempt to impose, solicit another to impose or otherwise permit the imposition of indignities or cruel and unusual punishment on any prisoner.

Steckman was aware the pod where he worked on May 7, 2014, was subject to misbehavior by its inmates. For reasons stated above, deputies working in residential pods have an affirmative duty to monitor the pod for misbehavior and to intervene to stop it. Steckman failed to conduct the most rudimentary visual inspection of a pod where he knew inmates were likely to engage in misbehavior, and where he observed at least two incidents of such misbehavior. The hazing activity by two tier porters, described above, imposed indignities on fellow inmates. Steckman's failure to monitor the pod for such conduct, permitted ongoing indignities by tier porters to continue unabated in violation of this Agency rule.

400.5 – Harassment of Prisoners

Deputy Sheriffs and employees shall not taunt or harass any prisoner or encourage or permit others to do so. Deputy Sheriffs and employees shall not

maliciously embarrass, intimidate or threaten any person or encourage or permit others to do so.

Two tier porters' pat searches of other inmates on May 7, 2014, were harassment. Based on the evidence, above, Steckman was aware of two or three instances of those pat searches or attempted pat searches. Thus, his failure to intervene permitted the continuation of that harassment in violation of RR 400.5.

400.6 – Abuse of Prisoners

Deputy Sheriffs and employees shall not subject inmates to physical abuse or solicit or encourage others to do so. Physical injury or physical harm is not required to violate this rule.

Without the second sentence in this rule, it is doubtful most of the inmate pat searches on May 7, 2014 would have amounted to "physical abuse" in violation of the first sentence in this rule. However, the addition of the second sentence makes clear that a low bar is intended, and infers that any uninvited touching which is objectively offensive⁷ is included. There was little doubt that several of the recorded pat searches were physical abuse, including when a tier porter kicked out an inmate's leg, causing him to collapse, slightly injured, as he hobbled away in evident pain. Several inmates obviously protested and attempted to avoid the pat searches.

Steckman did not engage in physical abuse of inmates during his shift on May 7, 2014. However, it is more likely than not he was aware of two instances of physical abuse under this rule for reasons stated above. Even accepting Steckman's statement that he said "cut that shit out," he did no more than make that statement, failed to ensure his order was being carried out, and failed to make the most minimal perusal of this "dangerous" pod to insure no more such abuse occurred. Under those circumstances, Steckman's indifference, encouraged the two tier porters to continue their physical abuse of other inmates, in violation of D.O. RR 400.6.

300.19.1 – Disobedience of Rule

Deputy sheriffs and employees shall not violate any lawful Departmental rule (including CSA rules), duty, procedure, policy, directive, instruction, order (including Mayor's Executive Orders), or Operations Manual section.

Department Order 2440.1 P —Human Relations/Code of Ethics and Standards of Conduct

1. Purpose: The purpose of this order is to prescribe a code of conduct for all employees of the Denver Sheriff Department (DSD), its volunteers, and its contractors regarding the treatment of employees, the public, and those individuals that have been entrusted to the custody of the Department....

2. Policy: Actions of officers and civilians that are inconsistent, incompatible or in conflict with the values established by this agency negatively affect its reputation and that of its officers. Such actions (or inactions) thereby detract from the Department's overall ability to effectively and efficiently protect the public, maintain peace and order, and conduct other essential business. Therefore, it is the policy of the Denver Sheriff Department that staff conduct themselves at all times in a manner that reflects the ethical standards consistent with the rules contained in this policy and otherwise disseminated.

⁷ By way of contrast, an inmate inadvertently backing into another might be uninvited contact, but would not be objectively offensive.

Further, it is the policy of the Denver Sheriff Department that every DSD employee, volunteer, or contractor has the right to work in a professional environment free from discrimination, harassment, hazing, retaliation or intimidation. It is also the Department's policy that persons with whom we come in contact in the course of performing our duties or otherwise shall enjoy freedom from such discriminatory or harassing behavior. To this end, it is the policy of the Denver Sheriff Department that its staff, volunteers and contractors receive and be familiar with and adhere to the standards of conduct as explained and set forth in this Department Order.

Finally, because public confidence in the integrity of members of the Denver Sheriff Department (DSD) demands that we demonstrate the highest standards of conduct at all times, the Denver Sheriff Department maintains a zero tolerance for violations of any part of this policy.

. . .

6. Ethical, moral and lawful standards governing employee conduct: All employees, volunteers, and contractors of DSD are expected to adhere to the standards of conduct described in this Order. In addition, employees should refer to and are expected to abide by the Denver Sheriff Department Rules and Regulations, and any other federal, state or local laws, statutes or regulations governing expected conduct and lawful behavior.

7. Adherence to and Accountability for Delegated Authority: A brief and general description of the duties, responsibilities and the level of delegated authority to effectively accomplish the assigned tasks of each deputy sheriff rank are listed in the Department's Personnel Manual. The Denver Career Service Authority maintains a current list of job descriptions for all civilian employees, including the level of delegated authority to effectively accomplish the assigned tasks, on the City and County of Denver website. Each employee will be held accountable for the delegated authority described. Also see DSD Rules 330.27.7 and 300.79.2.

A. Denver Sheriff Department Guiding Principles (also see Appendix A): Employees of the Denver Sheriff Department, as well as Department volunteers and contractors, should conduct themselves according to the following guiding principles while performing their duties:

1. Being ethical and honest in everything we do or say;
2. Acting with respect to all, including other employees and the public;
3. Treating others as we would want to be treated;
5. Being objective, accessible, tolerant, flexible and adaptable;
7. Encouraging a harmonious, supportive environment, putting the team first and fostering positive working relationships;
8. Recognizing the humanity in others and being able to deal with difficult people and situations with compassion and concern;
9. Making reasonable decisions based on common sense and good judgment;
10. Taking personal responsibility and initiative to get things done;
11. Being proactive rather than reactive;
13. Setting a positive example for others to follow;
14. Having the courage to do the right thing;
16. Being accountable for everything we do;
17. Striving for excellence and continued self-improvement;
18. Demonstrating skill, knowledge and competency in carrying out all assigned duties.

B. Professional Standards of Conduct: All Department employees, contractors and volunteers shall adhere to professional standards of conduct and ethical code, including but not limited to the following:

- 1. Follow all jail policies, procedures and directions;**
- 3. Observe restrictions on the use of force; not subjecting inmates to sexual, emotional or physical abuse or the use of unnecessary levels of force;**
- 4. Respect and protect inmates' rights;**
- 7. Assure safety and security as part of effective job performance;**
- 9. Cooperate in investigations conducted by the Internal Affairs Bureau (IAB) or other law enforcement agencies;**

8. Other Prohibited Conduct:

A. Conduct prohibited by Departmental Rules and Regulations

1. DSD employees...shall observe Departmental Rules and Regulations governing conduct, and not engage in conduct prohibited in such rules and regulations.

B. Discrimination, harassment, retaliation, and intimidation

2. No staff member shall perpetrate upon another or encourage conduct consistent with hazing at any time.

a. DSD has a zero tolerance policy far hazing. Hazing includes, but may not be limited to: the persecution or harassment of another via assigning meaningless, difficult or humiliating tasks, and/or by exacting humiliating performance from, or playing rough practical jokes upon, an individual. Hazing often (but not always) is directed at an individual who is considered new to a group or unit or under consideration for admission to a formal or informal "fraternity" and perpetrated by one or more veteran group members.

b. Any staff member who believes he/she has observed hazing, has belief or knowledge of its occurrence or believes he/she has been a victim of hazing shall report it immediately.

c. Any DSD member who perpetrates, is found to have encouraged such conduct, or fails to report such conduct is subject to discipline up to and including termination.

Subsection 8 of this rule is the cornerstone of the Agency's case. Subsections 1, 2, 6, and 7 are merely explanatory. Section 7.A is unenforceably vague, and section 7.B. is supplanted by more specifically-directed violations alleged elsewhere

With respect to subsection 8, particularly subsection 8.B., the Agency maintains a zero-tolerance policy against hazing. Deputies who observe hazing are required to report it, and the failure to do so subjects the deputy to discipline, up to and including dismissal. [Exhibits 8-6, 8-7; see *also* definition of hazing in Exhibit 8-2].

As defined by the Agency, hazing is "[t]o persecute or harass with meaningless, difficult or humiliating tasks, to initiate as into a real or imagined, formal or informal "fraternity" by exacting humiliating performance from, or playing rough practical jokes upon, an individual; to encourage such

conduct.” [DO 2440.1 P]. The tier porter’s pat search of other inmates harassed them by meaningless subjugation to pat searches. The inmate whose legs were kicked apart was injured.

I infer, between the Agency’s notice of discipline and Elwell’s responses during cross-examination and during her re-direct examination, that the Agency claimed Steckman observed seven instances of hazing and failed to address them. The following time signatures, from one of the pod 4E security cameras, appear to constitute the seven claimed breaches under the Agency’s anti-hazing rule:

12:42:19;
12:43:03;
12:43:55;
12:48: 02;
12:48:29;
12:38:33;
12:48:57.

[Exhibit 10].

The most reliable evidence in determining whether Steckman likely observed, or became aware of hazing at any of the above-referenced times was the security camera recording, Exhibit 10. The first time stamp, referenced above, was the instance most likely to be observed by Steckman. The tier porter kicked apart an inmate’s legs from behind, causing the inmate to slip and collapse on the desk directly in front of Steckman. Steckman did not look up and did not react in any apparent way. Since the inmate collapsed, and latched onto the desk with his arms directly in front of Steckman, at a distance which could be measured in inches rather than feet, it is more likely than not Steckman was aware of the occurrence, despite his failure to respond to it. Moreover, Steckman acknowledged he was aware of “two or three” instances of hazing, by tier porters patting other inmates, which he described as “horseplay,” (see footnote 7). Steckman’s re-naming of prohibited conduct does not render the conduct less prohibited.

Steckman’s observation of the tier porter’s conduct and failure to intervene more likely than not encouraged the continuation of that conduct. Consequently, Steckman’s permitting a tier porter to continue to conduct pat searches of other inmates, even after becoming aware of such conduct, was hazing as defined by RR 200.16.

The evidence established that Steckman was aware of, yet failed to intervene in at least two instances of hazing, one in the form of an inmate’s reaction to physical abuse by a tier porter, and another in the form of another tier porter wresting for control of another inmate. The Agency relied principally on video evidence from the security cameras in pod 4E in finding Steckman observed improper pat searches by a tier porter, specifically at 12:42:19 and 12:44:17. [Exhibit 10].

Steckman acknowledged seeing “a couple” or “maybe three” instances of inmate contact he described as “horseplay.” He stated he told the offending tier porters to “cut that shit out” and “stop,” then did not see any additional pat searches subsequently.

Steckman claimed, accurately, that his eyes cannot be seen at any point in the recording. Having viewed the video recordings described immediately above, I find it likely, by a preponderance of the evidence that, in each of the specified instances when Steckman became aware of hazing and failed to act to stop them or report their occurrence, was a form of hazing as defined above. Consequently, his failure to report those instances of inmate hazing was a violation of Departmental Order 2440.1 P.8.B.2.c.

Steckman argued that, as relief officer, it was neither his place nor did he have an opportunity to change the existing culture of Officer Hayes’ pod which Steckman described as “pandemonium,” “kind of crazy in there,” and “out of control.” [Steckman testimony]. Irrespective of Steckman’s opinion, as a

deputy sheriff he is required to prevent hazing as required by this rule, and to uphold order and security wherever he is assigned. The inmate housing pods do not belong to any particular officer and the housing officer may not establish a norm based on wrongful inmate behavior.

Steckman also declared the only contact he saw between the tier porter and several inmates was “horseplay,” and not “pat searches.” Several times, Steckman stated the behavior he observed both at the time and in reviewing video after the fact show inmates engaging in horseplay and not pat-searches. In terms of this rule, Steckman’s distinction between pat-searches and horseplay is a distinction without a difference. The conduct is impermissible hazing by either definition, and Steckman observed at least some of it, while disengaging from his duty to survey the pod, which prevented him from observing other instances of hazing.

Steckman also claimed no inmate complained to him or suffered injury. That is not the test under this rule. Steckman had an affirmative duty to observe, discover, and put a stop to inmate hazing occurring directly in front of him. His failure to do so was a violation of this Agency rule.

Van-Cise Simonet detention Center/Housing Post Order Section IV- GENERAL DUTIES AND RESPONSIBILITIES

The Housing Officer shall be responsible for the following, but not limited to:

1. The care, custody, and supervision of all inmates assigned to the housing unit.

2. Making rounds to ensure the housing unit is safe, secure, free from maintenance problems, fire hazards, security concerns, and unusual inmate behavior.

3. Pat searching all inmates entering or leaving the housing unit.

4. Coordinating inmate movement with officers assigned to other areas of the facility.

5. CSR 16-60 O. Failure to maintain satisfactory working relationships with co-workers, other City employees, or the public.

The Agency failed to produce evidence that any working relationship was harmed by Steckman’s failure to intervene in the inmate pat searches he observed on May 7, 2014. The notice of discipline alleged Steckman’s inattention to an inmate who was injured by a tier porter when his legs were kicked apart, failed to maintain a satisfactory relationship when the injured inmate looked to Steckman to do something and didn’t, which allowed a tier porter to injure another inmate. However, this rule requires some evidence of an actual harm to a working relationship and none was provided. Accordingly, no violation was established hereunder.

6. CSR 16-60 Y. Conduct which violates the Rules, the City Charter, the Denver Revised Municipal Code, Executive Orders, or any other applicable legal authority.

“Tier porters are not permitted to conduct pat searches of other inmates, as such searches are solely the responsibility of the deputies. This responsibility is not delegable to tier porters.” [Exhibit 2-6, n.1].

Sheriff Department post orders are “applicable legal authority” under CSR 16-60 Y. By observing, yet failing to intervene in at least two instances of pat searches, Steckman permitted a tier porter to conduct pat searches of other inmates in violation of this post order. For reasons stated above, Steckman’s description of the activity he observed as “horseplay” was unconvincing.

7. CSR 16-60 Z. Conduct prejudicial to the good order and effectiveness of the department or agency, or conduct that brings disrepute on or compromises the integrity of the City.

Elwell claimed the actual harm resulting from Steckman's conduct was that he allowed tier porters to conduct pat searches, resulting in at least one inmate being injured when his feet were kicked out from under him and two inmates being placed in arm bar holds, all of which exposed the city to financial liability. [Elwell testimony; Exhibit 2-17]. Because the inmate suffered actual harm when he hit the desk and limped away in evident pain, and Steckman, though aware of the incident, failed to intervene to prevent subsequent pat searches, the good order and effectiveness of the Agency, to care for and supervise inmates, was diminished in violation of this rule.

V. DEGREE OF DISCIPLINE

The purpose of discipline is to correct inappropriate behavior if possible. Appointing authorities are directed by CSR 16-20 to consider the severity of the offense, an employee's past record, and the penalty most likely to achieve compliance with the rules. CSR § 16-20.

A. Seriousness of the proven offenses

Steckman ignored almost everything going on around and directly in front of him during the entire laundry exchange as shown in Exhibit 10. Since, according to his own testimony, inmate residential pod 4E is a dangerous place where he was constantly concerned for his security, it was, at a minimum, highly neglectful, and more accurately, a wanton disregard for his own safety and the safety and security of inmates.

The Agency assessed discipline pursuant to its disciplinary matrix. The notice of discipline, and Elwell's testimony stated, that Steckman's violation of D.O. 200.16, violation of rules, fell into the F category with a presumptive penalty of termination, based on "willful and wanton disregard of department guiding principles and demonstrat[ing] a serious lack of integrity, ethics, and character related to [his] fitness to hold his position," along with "egregious misconduct substantially contrary to the standards of conduct reasonably expected of one whose sworn duty is to uphold the law." [Exhibit 2-16; Elwell testimony]. In essence, this finding states Steckman is virtually incapable, by character, personal ethics and integrity, of upholding the Agency's mission. Nonetheless, Steckman continued to serve in the inmate pod environment after May 7, 2014, for several months, apparently without jeopardizing inmate security and safety.

While Steckman's continued successful service was a mitigating factor, his wanton disregard of inmate wrongdoing on May 7, 2014 created a substantial risk of harm, and in one instance, actual harm, to an inmate. As noted by Steckman himself, pod 4E was known for its lack of discipline and uncurtailed inmate wrongdoing. Thus, Steckman's lack of attention created a risk of harm to himself and to others.

The Agency views dishonesty, particularly during the course of an investigation, as among the most egregious violations in its rules and regulations, and almost always results in the Agency's termination of the employment relationship. [See, e.g. In re Gale, CSA 02-15 (11/23/15); In re Valerio, CSA 22-14 (9/2/14); In re Kemp, CSA 19-13 (1/2/14)]. Steckman's denial that he observed any inmate pat searches was an unsuccessful attempt to redefine that observed behavior into something less egregious. Consequently, Steckman was aware he failed to intervene to stop wrongful inmate behavior, so that his later denial was dishonest.

B. Prior Record

The Agency's notice of discipline cited eight incidents of prior discipline, beginning in 2004. The two most recent disciplinary incidents were a 23-day suspension in 2013 for failing to observe safety protocols, and a 10-day suspension in 2014 for discourtesy. The previous incidents were minor written or verbal reprimands. While unrelated to the present case, the prior, significant suspensions deserve consideration as an aggravating factor in the present case as a matter of progressive discipline rules. [Exhibit 2-7 and 2-8]. A reasonable administrator could find that, even if the violations in this case, alone, did not justify termination, principles of progressive discipline justify that result under the Career Service Rules.

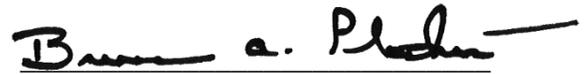
C. Likelihood of Reform

In light of Steckman's denial of any wrongdoing, the likelihood of reform is unknown.

VI. ORDER

The Agency's termination of the Appellant's employment on June 2, 2015 was not clearly excessive, and was within the range of discipline which could be assessed by a reasonable administrator. Further, the Agency's termination of Appellant's employment complied with CSR 16-20 and is, therefore, AFFIRMED.

DONE June 30, 2016.



Bruce A. Plotkin
Career Service Board Hearing Officer

NOTICE OF RIGHT TO FILE PETITION FOR REVIEW

A party may petition the Career Service Board for review of this decision in accordance with the requirements of CSR § 19-60 et seq. within fifteen calendar days after the date of mailing of the Hearing Officer's decision, as stated in the certificate of mailing below. The Career Service Rules are available at [www.denvergov.org/csa/career service rules](http://www.denvergov.org/csa/career%20service%20rules).

All petitions for review must be filed by mail, hand delivery, or fax as follows:

BY MAIL OR PERSONAL DELIVERY:

Career Service Board
c/o Employee Relations
201 W. Colfax Avenue, Dept. 412
Denver CO 80202

BY FAX:

(720) 913-5720

Fax transmissions of more than ten pages will not be accepted.