CIVIL SERVICE COMMISSION, CITY AND COUNTY OF DENVER, STATE OF COLORADO

Appeal No. 06 CSC 01A

FINDINGS AND ORDER

IN THE MATTER OF THE APPEAL OF:

STEVEN SANDOVAL,

Petitioner/Appellee.

vs.

ALVIN J. LACABE, JR., MANAGER OF SAFETY,

Respondent/Appellant.

Before Commissioners Anna Flores, Cecilia E. Mascarenas, Stephen J. Young, and Neal G. Berlin.

This matter is before the Civil Service Commission on the Manager’s appeal of the Hearing Officer’s Decision dated May 7, 2007. The Commission has reviewed and considered the full record before it and AFFIRMS the Hearing Officer’s Decision on the grounds outlined below.

I. FACTUAL BACKGROUND

On August 13, 2005, Officer Sandoval and his wife were involved in an alleged domestic violence altercation. Mrs. Sandoval called 911 and reported that her husband was hitting her. Although the dispatcher told Mrs. Sandoval that officers would be there soon, neither she nor Officer Sandoval were present when Aurora police officers arrived at the Sandoval home. Following the incident, Mrs. Sandoval did not file a formal police report. Nevertheless, the Aurora Police Department reported the matter to the Denver Police Department’s Internal Affairs Bureau (IAB), which conducted an investigation into the August 13, 2005 incident, as well as other alleged domestic violence altercations between Officer Sandoval and his wife from 2002 to 2005. Officer Sandoval and his wife were divorced in 2006.

On May 9, 2006, following the IAB investigation, Sandoval was given a Contemplation of Discipline Letter charging him with violating the following rules and regulations of the Denver Police Department:
RR-105 - Conduct Prejudicial. Officers shall not engage in conduct prejudicial to the good order and police discipline of the department or conduct unbecoming an officer which may not specifically be set forth in department rules.

RR-112 - Departing from the Truth. Officers shall not willfully depart from the truth, either in giving testimony or in connection with any official duties.

RR-115 - Law Violations. Officers shall obey the Charter of the City and County of Denver, all City Ordinances, and all State or Federal Statutes.

The factual allegations supporting these rule violations included the August 13th incident and four previous incidents between the Sandovals. (Resp. Ex. 2). The Manager sustained the rule violations and ordered Officer Sandoval’s dismissal from the classified service. (Resp. Ex. 1).

Sandoval appealed his dismissal to the Civil Service Commission Hearing Officer. Based on the evidence and testimony presented, the assigned Hearing Officer found that Sandoval did not assault his wife on August 13, 2005, and therefore did not violate RR-115; that Sandoval did not depart from the truth during the IAB investigation and therefore did not violate RR-112; that Sandoval did violate RR-105 by leaving his home before the arrival of the Aurora police officers, but this single rule violation did not justify a dismissal. The Hearing Officer modified the dismissal to a 30 day suspension. This appeal to the Commission follows.

II. FINDINGS

As grounds for appeal, the Manager raises erroneous rules interpretation and policy considerations pursuant to Civil Service Commission Rule 12 § 6.C.(2) and (3). The Commission finds the Hearing Officer did not erroneously interpret RR-112, as the Manager contends, nor does this case present policy considerations beyond the case at hand.

RR-115

The Hearing Officer correctly noted that the Manager bears the burden of proof “to justify any disciplinary action administered.” CSC Rule 12 §5 E (3). Although the Contemplation of Discipline Letter summarizes a series of domestic incidents from 2002 through 2005, at the hearing, the Manager only presented evidence in support of the August 13, 2005 incident. The Hearing Officer specifically noted that he “was stunned” when counsel for the Manager failed to ask Mrs. Sandoval a single question about any of the other incidents summarized in the letter, and failed to present any other evidence to substantiate them. (Decision, p. 9). Instead, counsel for the Manager attempted to introduce evidence of these prior incidents through Officer Sandoval, who denied that he had assaulted his wife on any occasion. Counsel for the Manager also introduced into
evidence two temporary restraining orders, one of which did not relate to the incidents summarized in the letter, and neither of which proved that Sandoval had assaulted his wife.

On appeal, the Manager argues that the prior incidents did not form the substantive basis for dismissal; rather, they were relied upon by the Manager only as background evidence in determining credibility and assessing the probability that Officer Sandoval had assaulted his wife on August 13, 2005. (Opening Brief, p. 13). The Commission finds, however, that this argument is belied by the very language of the Contemplation Letter which states, "this action is based upon the following information...", and then summarizes all of the police-involved incidents between 2002 and 2005. Moreover, without proof that Officer Sandoval had assaulted his wife in any of the prior incidents, they have no probative value in determining credibility or in assessing the probability that Officer Sandoval assaulted his wife on August 13th.

Left with only the one incident of alleged domestic violence, the Hearing Officer found Officer Sandoval’s testimony – that his wife pushed him and he pushed her back to keep her away – more credible than that of his wife. Such a credibility determination is certainly within the Hearing Officer’s province to make and does not implicate any policy considerations beyond the case at hand.

The Manager also contends that the Hearing Officer’s evidentiary rulings – i.e., excluding Sgt. Knipple’s testimony about hearsay statements made by Mrs. Sandoval – significantly impacted the outcome of the case. This argument, however, ignores the fact that counsel for the Manager failed to ask Mrs. Sandoval any questions regarding the prior incidents; had he done so and Mrs. Sandoval denied the prior assaults, the Manager could have offered Sgt. Knipple’s testimony as a prior inconsistent statement under C.R.E. 801 (d) (2). The problem here is not the Hearing Officer’s evidentiary rulings but the presentation of evidence by the Manager.

RR-112

The Hearing Officer found there were some “minor inconsistencies” between Officer Sandoval’s statement to IAB, his testimony at the hearing, and his wife’s testimony, but such inconsistencies would be expected from any witness’ retelling of an earlier, emotional event and did not represent a willful attempt to tell a falsehood. (Decision, p. 16). The Manager contends that the Hearing Officer failed to apply the correct meaning to the term “willful” and therefore erroneously interpreted RR-112. However, it is up to the Hearing Officer to assess the credibility of witnesses and determine whether, in his opinion, a witness has willfully or intentionally departed from the truth. The Commission finds that the Hearing Officer applied the correct meaning to the term “willful” and correctly interpreted RR-112.
III. ORDER

IT IS THEREFORE ORDERED that the Manager's appeal is DENIED and the Hearing Officer's Decision of May 7, 2007, is AFFIRMED.

Commissioners Anna Flores, Cecilia E. Mascarenas, Stephen J. Young, and Neal G. Berlin concurring.

FILED 15th day of February, 2008.

CIVIL SERVICE COMMISSION
CITY AND COUNTY OF DENVER

By: Earl E. Peterson
Executive Director