INTRODUCTION

This matter comes before the Commission on an appeal by the Manager of Safety (hereinafter “Manager” or “City”) of a decision issued by a panel of three Hearing Officers (“Panel”) in the consolidated appeals of Cameron Moerman and Luis Rivera, Police Officers in the Classified Service of the Denver Police Department (collectively “Officers”). In this appeal, the Manager of Safety appeals six issues, asserting that: the Panel improperly substituted its

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1 Pursuant to a change to the City Charter, the position known at the time of the events of this case as Manager of Safety is now referred to as Executive Director of Safety.
judgment for that of the Manager and that it failed to afford the Manager deference in the
determination of the penalty to be assessed the officers; the Panel incorrectly determined that the
Manager exceeded his authority when he took longer than 15 days to decide on discipline and
added charges to the first pre-disciplinary letter; the Panel erred in refusing to admit the officers’
prior statements into the record as substantive evidence; the panel erred when it ruled that C.R.S.
18-8-111 was inapplicable to the officers; the Panel erroneously interpreted RR-305 (Duty to
Protect Prisoner); and that the Panel erred when it determined that the Manager had not proven
an RR-115 Law Violation concerning C.R.S. 18-8-105.

While we do not agree with all of the positions asserted by the Manager, we believe that
the Panel erred in several critical respects. Those errors compel us to reverse the decision of the
Panel and reinstate the discipline imposed by the Manager of Safety.

FACTUAL BACKGROUND

The Commission adopts, as it must pursuant to Section 9.4.15(F), the facts set forth in the
Panel’s Findings, Conclusions, and Order (“Panel’s Order”). We believe the relevant facts to be as follows.

On April 18, 2008 Denver Police Officer Cameron Moerman was on patrol, riding with fellow officer Jason Simmons. (1)² They observed a juvenile, later identified as Juan Vasquez, sitting on the front porch of a residence, holding a large container of beer. As they neared the juvenile, he took notice and ran from them into an alley between Pecos and Osage. A second juvenile also fled the scene (2-3).

² The parenthetical numeric references refer to the numbered paragraphs in the Hearing Panel’s decision.
Officer Simmons alerted the gang unit that they were pursuing a juvenile who was running from them (3). Additional officers soon joined the search (5).

Officer Moerman, having given chase on foot, saw Vasquez stumble into an alley and start running towards him. When Vazquez finally realized that he was running towards, rather than away from Moerman, he tripped, lost his shoes, and fell. (6)

Moerman continued giving chase to the now shoeless Vasquez. Having closed the gap between him and Vazquez to approximately fifteen feet, Moerman yelled at Vasquez to stop or he would shoot. Vazquez ignored Moerman and continued running. (7) Moerman then threw his flashlight at Vazquez, but to no avail. Eventually, Vazquez ran into a fenced parking lot. He unsuccessfully attempted to scale the fence and fell hard to the ground. (8)

At the same time, Officer Rivera was on patrol riding with Officer Charles Porter. They arrived on the scene a few seconds after Moerman had taken down Vazquez. (9) Rivera saw Moerman straddling Vazquez who was lying on the ground. Moerman had control of Vazquez’s arms. (11) Moerman had also handcuffed Vazquez (9, 11, 12)

Not directly observing Vazquez, both Officers Moerman and Rivera heard him sharply exhale. They turned to see Porter holding onto the fence, stomping on Vazquez for no apparent reason, for a few seconds, with both feet. Both Moerman and Rivera were surprised by what they were witnessing. They did not have time to stop Porter while he was stomping Vazquez. (13, 14, 17) Shortly thereafter, Vazquez vomited and complained that he could not breathe. Moerman called an ambulance. (15)

Sgt Lombardi of the Gang Unit arrived on the scene. He initially asked Officer Porter what had happened. In response, Porter told him to ask Moerman and Rivera. (19) Lombardi
had Moerman fill out an Injury Prior To Arrest (IPA) form (21). On that form, Moerman failed to mention Rivera and Porter as other “officers involved.” He also indicated that no force had been used on Vasquez. (30) In a separate statement of the incident made that night, Moerman wrote that, “all of the actions taken by officers were reasonable and appropriate.” Moerman, in that same statement, made no mention of Officer Porter’s stomping of Vasquez. (29). Similarly, the handwritten statement executed by Rivera also failed to mention Porter. (31)

After leaving the scene, Rivera asked Porter for an explanation of the stomping. Porter responded, “I don’t know, it’s just something I do lately. I like the way it makes them sound.” (24)

The next evening, Moerman learned that Vasquez was hospitalized in an intensive care unit.3 This caused him to be concerned about Vasquez, his own career (knowing that he failed to mention Porter’s conduct in his reports), and having to “rat out” a senior officer. (34)

Eventually, Moerman contacted a supervising Sergeant, who had also been on the scene, and informed him that there had been three officers on the scene and that two of them had nothing to do with Vasquez’s injuries. The Sergeant did catch the meaning of what Moerman was trying to tell him and realized that senior Officer Porter was the one whom Moerman was implicating for Vasquez’s injuries. (35)

Vasquez sued for his injuries. The City settled with him for $885,000.00. (28)

The subsequent investigation of the incident led to disciplinary charges being brought against Moerman, Rivera and Porter. On September 9, 2008, both Moerman and Rivera were charged by Denver Police Chief Whitman with the following violations: (46)

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3 Vasquez had suffered moderate liver laceration, grade-4 kidney fracture and internal bleeding in his pelvic area and abdomen. He required surgery to repair his kidney. He was hospitalized until May 2, though his kidney needed to be catheterized for five months (26-7)
1. RR-102 (Violation of any Department Rule) (as it pertains to OMS 105.1, Duty to Report) (requiring officers to immediately report all resistance or incidents of uses of force);

2. RR-305 (Duty to Protect Prisoner);

3. RR-306 (Unnecessary Force);

4. RR-112.2 (Commission of Deceptive Act) (post matrix)⁴;

5. RR-131 (False Report);

6. RR-112 (Departing from the Truth);

7. RR-115 (Law Violation of C.R.S. Section 18-8-11 False Reporting to Authorities); and

8. RR-102 (as it pertains to D & R⁵ 3.13, requiring officers to exhibit the highest standards of efficiency and safety).

A Chief’s Hearing was convened. On September 24, 2009, Chief Whitman sustained the following violations: (47)

RR-102 as it pertained to the Duty to report;

RR-305 Duty to Protect Prisoner;

RR-131 False Report;

RR-112 Departing from the Truth; and

RR-115 Law Violation of C.R.S Section 18-8-11 False Reporting to Authorities

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⁴ On page 11, footnote 19 of the Panel’s decision, the Panel notes that on October 1, 2008, “a new disciplinary system called ‘the Matrix’ replaced the old ‘comparative discipline system...’” We think it important to note that that the Matrix did not eliminate the Charter-referenced concept of comparative discipline. We believe the matrix was implemented, at least in part, to help management better insure that the concept of comparative discipline was honored and maintained.

⁵ Duties and Responsibilities of Personnel, Division III, Police operations manual, Series 3.00-34.
Chief Whitman recommended that the officers be dismissed, but also recommended that their dismissal be held in abeyance for 2 years and that each officer serve a 90-day unpaid suspension for each violation, to be served concurrently. (48)

The Chief’s recommendations were sent to Manager of Safety Al LaCabe\(^6\) for final action. On October 21 and October 22, 2009, LaCabe met with the officers and their attorneys and advised them that he needed an additional two weeks to complete his review of the file. (50) On October 22, 2009, Manager LaCabe sent the matter back to the Chief for further investigation. He never acted on Chief Whitman’s September 24 recommendations. (51)\(^7\)

On June 18, 2010, Moerman and Rivera were given notice that two additional charges had been added to their discipline. Specifically, the charges against them now included: 9, a new violation of RR-115 (Law Violation) pertaining to five sections of the criminal code and one section of the Denver Revised Municipal Code; and 10, a new charge of RR-105, Conduct Prejudicial, both pre-matrix and post-matrix. (54)

One week later, the Officers went to court seeking a temporary restraining order (TRO) against Manager LaCabe, seeking to enjoin him from adding the new charges and objecting to the nine-month delay (55). The Court denied the officers’ request for a TRO, indicating that they had not demonstrated irreparable harm.\(^8\) (56)

On June 28, 2010, a new Chief’s Hearing was convened. The Chief sustained charges 1, 2, 5, 6, 7, 9 (law violations), and 10 (conduct prejudicial) and recommended the same

\(^6\) Now retired from the City.

\(^7\) The full finding made by the Panel is that MOS LaCabe never addressed the Chief’s recommendations “until June 10, 2010.” For reasons that will become evident, supra, as a matter of law, we disagree with that last portion of the finding.

\(^8\) A temporary restraining order “may only be issued upon a strong showing that specific immediate and irreparable harm will occur absent the order.” City of Golden v. Simpson, 83 P.3d 87, 96 (Colo. 2004).
punishment he had previously recommended. (57) The next day, Manager LaCabe issued a Departmental Order of Discipline discharging Moerman and Rivera. (58)

Each Officer filed a timely appeal of their discharge. (59) Their hearings were consolidated. As it turned out, the Panel appointed to hear their appeals was the same panel that had heard the appeal of Officer Porter. Upon petition by the Officers, the Denver District Court ordered this Commission to appoint a new Panel to hear the appeals of Moerman and Rivera. (67-70)

The current panel took testimony on nine days between July 16 and October 8, 2013. (72) At issue before the Panel were the following ten specifications lodged against the Officers:

1. RR-102 as it pertains to OMS 105.1 Duty to Protect Report
2. RR-305 Duty to Protect Prisoner
3. RR-306 Unnecessary Force
4. RR-112.2 Commission of a Deceptive Act (post matrix)
5. RR-131 False Report
6. RR-112 Departing from the Truth (pre matrix)
7. RR-115 Law Violation as it pertains to C.R.S. Section 18-8-111 (False Reporting to Authorities)
8. RR-102 as it pertains to D & R 3.13 (maintain highest standards efficiency and safety)
9. RR-115 as it pertains to C.R.S. Sections 18-3-202, 3, 4; 18-1-603; 18-8-105; DRMC 38-93
10. RR-105 Conduct Prejudicial (pre and post matrix);
(all at Panel Decision, pp 17-18).
Ultimately, the Panel found no evidence that Moerman or Rivera used force or inflicted injury on Vasquez (Panel Decision, p. 20). Consequently, the Panel held that Specifications 2, 3, and 9 were not sustained. The Panel also determined that there was insufficient evidence to sustain the RR-115 Law Violation as it pertained to C.R.S. Section 18-8-105 (Accessory to a Crime) (id). The Panel noted, in dismissing Specification 2, that the Officers had insufficient time to provide protection to Vasquez and that it would be unfair for the Panel to find Moerman and Rivera guilty of the rule violation when the same rule violation against Porter had been dropped. (id)

The Panel next considered Specifications 1, 4, 6, 5, and 7, all dealing with dishonesty and trustworthiness. The Panel found that the Manager had proven Specifications 1, 5, and 6; that omitting matters from a report was the equivalent of lying; but that the three specifications were redundant, making two of them unnecessary (Panel Decision, p. 20).

The Panel went on to opine that this was not a post-matrix or hybrid matter because all of the events “surrounding Juan Vasquez and his injuries” occurred before the implementation of the disciplinary matrix. Accordingly, the Panel dismissed Specification 4 (RR-112.2, Commission of a Deceptive Act) because it was not until October 1, 2008, when the matrix was first implemented, that the Department “made it clearer” that omissions are deceptive. (id).

The panel dismissed Specification 7 concerning the Law violation centered on False Reporting to Authorities. The Panel found that said criminal statute did not apply to the Officers. (Panel Decision, p. 21)

The Panel dismissed Specifications 9 and 10. It held that the addition of the charge was untimely, and that the Manager did not have the authority to add said charges, regardless of whether they were considered pre-matrix or post-matrix. (id)
The Panel concluded by reinstating the Officers with full benefits and back pay, save for a thirty-day suspension for the sustained dishonesty violations. (Panel decision, p. 23) It is this Order from which the Manager now appeals.

**PROCEDURAL HISTORY**

The procedural history of this matter is long and complicated but more than adequately detailed in the Panel’s decision. As such, it need not be repeated here.

On January 30, 2014, the Manager of Safety filed a timely appeal of the Panel’s January 21, 2014 decision. Briefing by the parties was completed by April 22, 2014. After reviewing all relevant materials, the Commission rules as follows:

**DECISION**

A. **Basis for Appeal**

The City Charter limits our review of the Panel’s Order to certain defined circumstances. *See* City Charter § 9.4.15(F); *Woods v. City & County of Denver*, 112 P.3d 1050, 1052 (Colo. App. 2005). In this case, the City appealed the Panel’s Order on two separate grounds: (1) the Panel’s Order involves an erroneous interpretation of Departmental or Civil Service rules, and (2) the Panel’s Order involves policy considerations that may have effect beyond the case at hand. *City’s Notice of Appeal* at 2.

The Panel’s Order turns upon its interpretation and application of the Denver Police Department’s Operations Manual, Commission Rules and the City Charter. In addition, the decision addresses significant policy considerations associated with departmental discipline. Accordingly, we conclude that this appeal is properly before the Commission.
B. Standard of Review

The City Charter and Commission Rule 12\(^9\) address the standard of review for appeals to this Commission. The Panel’s findings of evidentiary fact are binding upon the Commission. City Charter § 9.4.15(F); Commission Rule 12 § 11(J) (5). The Charter expressly states that the Commission may not resolve contested issues of fact. City Charter § 9.4.15(F).

The Commission is not bound by the Panel’s findings of ultimate fact, conclusions of law, or mixed findings of law and fact; these findings are subject to de novo review. See Vukovich v. Civil Service Comm’n of City and County of Denver, 832 P.2d 1126, 1128 (Colo. App. 1992) (citing Blaine v. Moffat County School District RE No. 1, 748 P.2d 1280, 1287 (Colo. 1988)).


The Manager argues that the Panel erred when it concluded that the charge alleging that the Officers had violated RR-115 as it pertains to C.R.S. Section 18-8-105 (Accessory to a Crime) had not been proven. We note, as did the Manager, that pursuant to C.R.S. § 18-8-105(1), one is an accessory to a crime if that person, “with intent to hinder, delay, or prevent the discovery, detection, apprehension, prosecution, conviction, or punishment of another for the commission of a crime,” renders assistance to that other person. Even allowing for the fact that “rendering assistance” might include the deception by omission contained in the Officers’ statements, we cannot say, based on this record, that they rendered such assistance with the intent of helping in or hiding the commission of a crime, or that they made their statements with the intent of helping Officer Porter at all. While the record may reflect that the Officers failed to mention Porter and the stomping in their statements with the intent of preserving their jobs, or

\(^9\) This case is considered under the “old” Rule 12, which was in place prior to the March, 2013 amendments.
making their life on the job easier (by not having to “rat out” a senior officer), we cannot say that this is the same as making the omissions with intent to cover up a crime or assist a perpetrator of criminal activity. The Panel did not err in this finding.


The Manager asserts that the Panel erred when it determined that the R-115 Law Violation charge pertaining to C.R.S. Section 18-8-111 (False Reporting) was not proven. The Panel found that this law did not apply to police officers because the statute was designed to penalize false reporting by citizens of non-existent fires, emergencies or other events that might take law enforcement officials away from their duties to investigate false report. (Decision, p. 21.) That portion of the decision is correct – as far as it goes. But, as the Manager points out in her brief, it does not go far enough. It would appear that the Panel overlooked the provisions of C.R.S. Section 18-8-802(2) which provides, “[a]ny peace officer who knowingly makes a materially false statement, which the officer does not believe to be true, in any report made pursuant to subsection (1) of this section commits false reporting to authorities pursuant to section 18-8-11(1)(c).” Given the evidence found by the Panel, and given the Panel’s findings concerning the “dishonesty and untrustworthiness” charges (Decision, p. 20), we conclude that the Manager proved by a preponderance of the evidence that the Officers were guilty of violating RR-115 as it pertains to C.R.S. Section 18-8-111 (False Reporting to Authorities).

E. RR-305, Duty to Protect Prisoner

The Hearing Panel did not sustain the RR-305 Duty to Protect Prisoner against the Officers. The Manager asserts this as error. We agree.

This Rule and Regulation provides that, “Officers shall not allow a prisoner in their
custody to be physically or mentally abused by any person.” The Panel refused to sustain this charge based on the fact that the Manager dropped this charge when it was brought against Porter and also because it found that the Officers did not have time to protect Vasquez from Porter.

First, the Panel’s decision does not reflect why the charge against Porter was dropped – only that it was and that the Manager acknowledged that it was Porter who was responsible for Vasquez’s serious injuries. (Decision, p. 20). We will not speculate as to the reason(s) why the charge of a violation of RR-305 by Porter was dropped. Significantly, we do not believe that the fact that Porter ultimately was not charged with failure to protect the prisoner is grounds for dismissing the charge against Moerman and Rivera. The Panel’s responsibility was to decide whether the charges brought against the Officers had been proven by a preponderance of the evidence; not to critique whether the Manager should have brought the charges in the first instance.

Further, we believe that the facts, as found by the Panel, warrant a conclusion that the Officers were guilty of violating RR-305. We believe that the Panel’s finding that the Officers did not have time to protect Vasquez proves that they failed in their duty to protect him. This is a case where the Officers plainly neglected to give proper attention to the prisoner. They turned away from him; they left him unobserved and unattended. It was their obvious neglect of the prisoner that allowed Porter to hold onto the fence and position himself to start stomping on Vasquez’s back. The Panel’s finding that the Officers did not have time to protect the prisoner from Porter is simply testament to the fact that they had, in fact, failed to protect him. The Panel erred when it failed to sustain this charge.

F. Matrix Charges

Specification No. 4 alleged that the Officers violated RR-112.2 Commission of a
Deceptive Act. This specification is based on a “new” rule and regulation implemented in conjunction with the disciplinary matrix which went into effect on October 1, 2008. The Panel refused to consider his specification because “[a]ll of the events surrounding Juan Vasquez and his injuries occurred before October 2, 2008....” The Manager urges that this was error. We agree.

While the record reflects that the events surrounding the injuries to Vasquez occurred before October 1, 2008, the record also reflects that events giving rise to the RR-112.2 specification, such as the Officers lying during the investigation or in court testimony occurred after October 1, 2008. Those events should have been considered by the Panel, and, consequently, so should have the RR-112.2 specification. Had the Panel done so, its findings suggest that it could have found a violation of this specification. The Panel’s failure to consider the specification was plain error.

G. Admissibility of the Officers’ Prior Statements

The Manager argues that the Panel erred when it refused to admit any of Moerman’s or Rivera’s prior statements into evidence for the truth of the matter asserted. The portions of the transcript cited by the Manager indicate that the materials were admitted into evidence for the limited purpose of showing what the Manager considered in making his disciplinary determinations, and that the Officers’ hearsay objections were sustained as to the truth of the matters asserted in those documents.

We first observe that we have previously held that strict adherence to the formal rules of evidence is not a requirement of our hearings. Martinez v. Guzman, 12 CSC 01A, p. 10 (“Our hearings were never intended to be civil or criminal trials and the Hearing Officer’s strict adherence to the rules of evidence ... was inappropriate.”).
We also cannot help but note that the statements the Manager sought to have admitted for substantive purposes were all statements made by the Officers, either under oath, or under circumstances where they were expected to tell the truth; and that they were, of course, available to explain anything and everything they wished to explain about those statements. In our administrative context, the Panel’s decision makes little sense. Regardless, the record indicates that the statements themselves qualify as non-hearsay under C.R.E. Section 801(d)(2). The failure of the Panel to admit the Officers’ prior statements for substantive purposes was error.

G. Added Specifications

The Manager argues that the Panel erred when it refused to consider Specifications 9 and 10, RR-115 Law Violations and RR-105 Conduct Prejudicial, respectively, which were added to the disciplinary documents some nine months after the original disciplinary document was tendered to the Manager for his review. The Panel, based its ruling on our decision in Kilroy v. Sparks and Murr, 11 CSC 03A-04A, as well as Denver City Charter Section 9.4.15(F). The Panel held that the Manager did not have the authority to add new specifications to the original disciplinary charges because the nine-month delay violated the Charter and because no “new and material evidence” was uncovered during the delay. Because we believe the Manager did not violate the City Charter, and because we do not believe our decision in Kilroy is apposite, we vacate the Panel’s holding.

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10 We appreciate the apparent unfairness confronted by an officer being required to respond to pages upon pages of evidence without any indication as to which pages of evidence the City would claim to contain inculpatory evidence. But that is not our case here. The Addendum To Departmental Order of Disciplinary Action dated March 5, 2012 (Panel Decision Exhibit E) gave the Officers notice which proceedings, and which areas of statements in those proceedings, amounted to evidence the Manager believed supported the disciplinary charges. To the extent that admission of the statements would have amounted to admitting those particular statements, as well as other non-relevant statements, the Officers never objected to the admission of the statements based on relevancy, only hearsay; and the panel did not justify its ruling during the hearing based on relevancy. Nor did the statements, need to be strictly “admissions” to be admissible. The statements, excluded from the definition of “hearsay” are now referred to as “opposing party’s statement[s]. C.R.E. Rule 801(d)(2).
First, we find the facts of this case distinguishable from *Kilroy*, so that we do not believe our holding in *Kilroy* to be applicable. In *Kilroy*, the only issue decided was:

[W]hether the Manager of Safety has jurisdiction to rescind and modify a disciplinary order after the ten-day appeal deadline passes and the disciplined officer has not filed an appeal to the Commission. We find that the Manager of Safety’s jurisdiction over disciplinary matters does not end once the ten-day time period to appeal the order of discipline has passed. 11

*Kilroy, supra*, at 1-2. In *Kilroy*, a Departmental Order of Discipline had actually issued. The question resolved by this Commission was, after that Order had been issued, could it be modified. In the instant case, however, no such Departmental Order was issued and then revoked, rescinded, reconsidered, accepted by the officers, or appealed by the officers. Instead, the Manager, before issuing a Departmental Order of Discipline, sent the matter back to the Chief for further investigation. Because discipline was never issued, to the extent that our decision in *Kilroy* can be read as any sort of limitation on the implied powers or authority of the Manager, those limitations simply are not applicable to the situation at hand.

We also do not believe that the Manager’s action of issuing new discipline well after the fifteen-day Charter designated period is violative of the Charter. Unquestionably, the Charter states that when the Chief sends a disciplinary recommendation to the Manager, the Manager is given fifteen days to “approve, modify or disapprove” the Chief’s disciplinary recommendations.

11 At the end of *Kilroy*, we once again summarized the issue we were deciding: “In this case, we resolve only the narrow question of whether the Manager of Safety is divested of jurisdiction to rescind or modify a disciplinary order once the ten-day appeal deadline has passed. For the reasons set forth above, we hold that Manager of Safety is not divested of jurisdiction under those circumstances.” *Kilroy, supra*, at page 10.
(Charter Section 9.4.14(B)). We believe, however, as a practical matter, this is what was done. The Manager, by not issuing an order and by sending the matter back for further investigation, disapproved the Chief’s proposed discipline.

After disapproving the discipline, further investigation was conducted. New disciplinary specifications were ultimately placed in the disciplinary document. The Officers were then given a new Chief’s hearing during which they were given an opportunity to respond to all ten charges and specifications. The Chief then made recommendations to the Manager on the ten specifications and then the Manager, within fifteen days of receiving this recommendation, issued a Departmental Order of Discipline. The Officers were given due process, that is, an opportunity to receive an explanation of all charges and an opportunity to make an initial response to all charges; and the Manager acted in accordance with the Charter.

The Panel’s ruling and its interpretation of Kilroy essentially eviscerates that holding. By finding that the Manager “failed to act in a timely manner as required by the Charter” (Panel Decision, p. 21), the Panel ignores our determination in Kilroy that the Manager necessarily has certain implied powers and authority, and that one of those powers, generally, is to reconsider disciplinary matters. If the Manager must, under all circumstances, act within fifteen days, then as a practical matter, the Manager would never be able to reconsider a disciplinary order, nor would the Manager ever have the ability to send a matter back for further investigation, unless that investigation was completed in a restrictively short amount of time. We believe, therefore, that the Panel misinterpreted the Charter.

If this ended our disagreement with the Panel’s decision, we would now be remanding the matter back for further proceedings. Because we cannot make findings of fact, we cannot say that the Panel should have found facts sufficient to warrant a finding that the Officers violated
RR-105. Similarly, we cannot say that had the Panel properly considered evidence it wrongly excluded, it would have come to different factual findings concerning any number of charges. We cannot say that the Panel would have concluded that the Officers had violated RR-112.2 given that it did not consider evidence of that charge.

H. Penalty Determination

What we can say, finally, is that we agree with the City when it argues to us that in modifying the imposed discipline to a thirty-day suspension, the Panel improperly substituted its judgment for that of the Manager’s, in violation of Commission Rule 12(B)(3). More specifically, the Panel substituted the judgment of the now-defunct Disciplinary Review Board (“DRB”) for that of the Manager. The Panel in its decision, cited to no authority, and we know of none, which would render it appropriate for a hearings panel to determine that that the judgment of the DRB is more worthy of deference than that of the Manager of Safety, especially in light of Commission Rule 12(B)(1) and City Charter Section 9.4.15(D) which require hearing officers to give “due weight to the necessity of the Manager to maintain administrative control of the respective department”; a phrase we have interpreted as requiring that the Manager’s disciplinary determination be given broad deference. Garcia v. Devine and Nixon, 11 CSC 05A-06A, p.13.

We do not lose sight of the fact that the Panel determined that the Officers had lied (even if by omission) during the course of an on-duty incident (which resulted in a serious physical harm to a citizen) and that these lies violated RR-102 as it pertains to OMS Section 105.01 (Duty to Report); RR-131 (False Report); and RR-112 (Departing from the Truth). We also note that these infractions violate core values of the Police Department (honesty and integrity). The Manager determined that discharge was the appropriate penalty. We will uphold the Manager’s
disciplinary decision if it is within the reasonable range of alternatives available to a prudent administrator (Vukovich v. Civil Service Comm’n, 832 P.2d 1126 (Colo. Ct. App. 1992)) and if it is not inconsistent with discipline received by other members of the department under similar circumstances (Charter Section 9.4.15(F)(d)).

The Panel did not determine that the penalty of discharge, especially for a violation of RR-112 (Departing from the Truth), is inconsistent with the discipline received by other officers under similar circumstances for said violations. In addition, as a matter of sound public policy, we cannot say that discharging an employee for lying about important official duties and responsibilities is unreasonable. Consequently, we reverse the ultimate decision of the Panel, and reinstate the discipline of discharge imposed by the Manager against officers Moerman and Rivera for the violations found by the Panel.

CONCLUSION

For the above stated reasons, the ultimate conclusion of the Panel is reversed, and the discipline imposed by the Manager of Safety for violations involving dishonesty and untrustworthiness is reinstated. Officers Moerman and Rivera are dismissed from the Classified Service.

Filed this 17th day of July, 2014.

FOR THE CIVIL SERVICE COMMISSION
CITY AND COUNTY OF DENVER

By: Earl E. Peterson
Executive Director