INTRODUCTION

This appeal requires us to consider whether RR-112.2, which forbids a Police Officer from committing a deceptive act “in connection with any investigation or any judicial or administrative proceeding” applies to an official internal investigation of the Denver Police Department (“Department” or “City”). In this case, Officer Jay Estrada received a tip regarding a vehicle suspected of being involved in a serious hit and run in the Stapleton neighborhood of Denver in December 2010. At the time he received the information, Officer Estrada elected not to pursue this lead any further. When later questioned about this decision as part of an informal internal investigation as to why this tip was not promptly investigated, Officer Estrada repeatedly denied receiving the tip. As a result of those denials, the Department initiated a formal internal
investigation into Officer Estrada’s statements, which conflicted with other evidence. In the course of this investigation, Officer Estrada again denied receiving the tip. Upon completion of the investigation, Officer Estrada was dismissed from the Department for violating RR-112.2 of the Department’s Operations Manual which prohibits “willfully, intentionally, or knowingly commit[ing] a material deceptive act” in connection with an investigation.

On appeal, a panel of three Hearing Officers (“Panel”) determined that Officer Estrada’s repeated denials did not “change the outcome of the Stapleton Hit and Run investigation” and therefore, were not material misstatements within the meaning of RR-112.2. We reverse. The Panel’s analysis improperly disregards Officer Estrada’s lie during the Internal Affairs Bureau (“IAB”)’s investigation into his conduct. Based on the Panel’s findings of evidentiary fact, we conclude that Officer Estrada’s continued denial that he received the tip regarding the suspect vehicle was material to the IAB investigation. Accordingly, we reinstate the Manager of Safety’s decision to dismiss Officer Estrada for violating RR-112.2.

FACTUAL BACKGROUND

The Commission adopts the material facts set forth in the Panel’s Findings, Conclusions, Decision and Order (“Panel’s Order”). See generally Panel’s Order at 3-6. For purposes of this appeal, we will restate the facts material to our decision.

In December 2010, Officer Estrada was employed as a Detective in the Department’s Traffic Investigation Bureau (“Bureau”). At the time, the Bureau was investigating a hit and run in the Stapleton neighborhood involving a pregnant woman who was struck by a vehicle. The hit and run resulted in the death of the victim’s unborn child.
At around 12:30 a.m. on December 12, 2010, Ryan Tuggle, a Denver Patrol Officer, contacted dispatch and asked to speak with a Bureau Detective. At the time, Officer Tuggle was covering for Officer Mike Allen of the Aurora Police Department on a traffic stop. Officer Allen believed that he may have stopped the vehicle involved in the Stapleton hit and run and Officer Tuggle wished to convey that information to the Bureau.

During the phone conversation, Officer Tuggle informed Officer Estrada that they had stopped a green SUV with damage to the passenger door mirror. He further informed Officer Estrada that the driver did not have a license and that the Aurora Police Department was towing the vehicle in question.

Based on the information from Officer Tuggle, Officer Estrada concluded that the vehicle in question was not involved in the Stapleton hit and run. Accordingly, he asked Officer Tuggle to complete a form and forward it to the lead Detective on the case. Officer Tuggle completed and sent the requested paperwork. Officer Estrada did not take any additional action to investigate the information provided by Officer Tuggle. Officer Estrada’s shift ended at 3 a.m. Because he had the following day off, he did not return to work until the evening of December 14, 2010.

Officer Allen became concerned that the Denver Police Department had not conducted any additional investigation of the green SUV and discussed his concerns with a Lieutenant in the Aurora Police Department. This Lieutenant then contacted the Bureau to relay Officer Allen’s concerns. Two Bureau Officers – Sergeant Michael Farr and Lieutenant Robert Rock – were informed of Officer Allen’s concerns. Both of these Officers shared those concerns.
Lieutenant Rock called in additional staff to immediately investigate the green SUV. Ultimately, it was determined that this vehicle was not involved in the Stapleton hit and run.

Apart from the investigation of the hit and run, Lieutenant Rock was concerned about the Department’s internal response to this information and the decision not to promptly investigate the green SUV. Accordingly, he also initiated an internal investigation “to determine who had made the mistake with regard to the tip.” Panel’s Order at 4. Around the time that Officer Estrada returned to work, Lieutenant Rock directed Sergeant Farr to “speak to the two Detectives on duty at the time the tip was received to investigate what happened and why the tip was not acted upon in a more timely and immediate fashion.” Id. Sergeant Farr then questioned Officer Estrada about the phone call from Officer Tuggle. “Instead of admitting to having received the call, it is undisputed that [Officer Estrada] lied to his supervisor and denied taking any phone calls during the time in question.” Id. Officer Estrada then repeated this lie in a later conversation with Sergeant Conover. In that conversation, Officer Estrada told Conover “that [he] did not talk to anyone about an Aurora tip relating to the Stapleton hit and run.” Id. at 5.

On December 20, 2010, based on the information from Sergeant Farr and Sergeant Conover, Lieutenant Rock decided to initiate a formal investigation against Officer Estrada for lying about receiving the Aurora tip. As part of that investigation, on December 23, 2010, Lieutenant Rock interviewed Officer Estrada. For the third time, Officer Estrada denied receiving the tip regarding the green SUV. Only after Lieutenant Rock played the radio dispatch recording of the phone conversation between Officer Estrada and Officer Tuggle, did Officer Estrada confess to receiving the call.
After the completion of the Department’s internal investigation, Police Chief Whitman recommended that Officer Estrada be disciplined as follows:

- Termination of employment for violation of RR-112.2;¹
- Sixteen hour suspension for violation of RR-112.1;²
- Sixteen hour fine for violation of RR-102.³

The Manager of Safety sustained Chief Whitman’s recommendations.

**PROCEDURAL HISTORY**

On June 1, 2011, Manager of Safety Charles Garcia (“Manager”) issued the Departmental Order of Disciplinary Action (“Manager’s Order”) which is the subject of this appeal. On June 6, 2011, Officer Estrada, through counsel, filed an appeal of the Manager’s Order. A panel of three Hearing Officers conducted a four-day hearing from November 1-4, 2011. The parties submitted closing arguments and proposed findings of fact and conclusions of law on December 21, 2011. The Panel closed the record and hearing on January 13, 2012. They issued their decision on February 13, 2012, overturning the Manager’s decision to discharge Officer Estrada.

On February 27, 2012, the Manager of Safety filed his appeal of the Panel’s Order. In addition, within the time permitted by our rules, the Manager requested a stay of the Panel’s

¹ RR-112.2 of the Department’s Operations Manual provides, “In connection with any investigation or any judicial or administrative proceeding, officers shall not willfully, intentionally, or knowingly commit a materially deceptive act, including but not limited to, verbally departing from the truth, making a false report, or intentionally omitting information.”

² RR-112.1 of the Department’s Operations Manual provides, “Officers shall not knowingly make a misleading or inaccurate statement relating to their official duties.”

³ RR-102 of the Department’s Operations Manual provides, “Officers shall obey all Departmental rules, duties, procedures, instructions, and orders; the provisions of the Operations Manual; and Mayoral Executive Orders.”
Order reinstating Officer Estrada, which we granted on April 11, 2012. Briefing by the parties was completed by July 6, 2012. We heard oral argument on September 21, 2012.

DECISION

A. BASIS FOR APPEAL

The Charter of the City and County of Denver (“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 decision involves an erroneous interpretation of Departmental or Civil Service rules, and (2) the Panel’s decision involves policy matters that may have effect beyond the case at hand. City’s Notice of Appeal at 2-3.

Our reversal of the Panel’s Order turns upon our interpretation of RR-112.2 of the Denver Police Department’s Operations Manual. In addition, our decision addresses significant policy considerations associated with the application of that rule. Accordingly, we conclude that this appeal is properly before the Commission.

B. STANDARD OF REVIEW

The City Charter and Commission Rule 12 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
C. VIOLATION OF RR-112.2 – Commission of a Deceptive Act

The Department charged Officer Estrada with violating RR-112.2 based on his repeated denials that he received the tip from Officer Tuggle. RR-112.2 provides, in its entirety:

In connection with any investigation or any judicial or administrative proceeding, officers 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 Panel determined that the City did not sustain the violation of RR-112.2 because Officer Estrada’s lies were not material to the investigation of the Stapleton hit and run. Panel’s Order at 6-8. The Panel rejected the City’s argument that Officer Estrada’s denials were material to the IAB investigation into Officer Estrada’s apparent lies seeking to conceal his role in the failure to follow-up on the information regarding the green SUV. The Panel reasons that it is fundamentally unfair to apply RR-112.2 to an Internal Affairs investigation because doing so could result in a situation where an Officer’s lie or misstatement that is immaterial in one context is transformed into a material deception because it is repeated as part of an IAB investigation. The Panel contends that this would effectively write the materiality requirement out of RR-112.2. Id. at 7-8. In addition, the Panel holds that a separate rule, RR-312.2, governs Officer conduct with respect to IAB investigations and implicitly preempts the application of RR-112.2 to deceptive acts committed in the course of an IAB investigation. Id. We disagree with both contentions.

As an initial matter, we do not disagree with the Panel’s definition of “material,” and, for purposes of this opinion, adopt the Panel’s holding that a deceptive act is “material” to an
investigation when it “relates to a fact that is of consequence to and impacts an official investigation or proceeding.” *Id.* at 7. Based on this definition, Officer Estrada’s false statement to Lieutenant Rock that he did not receive the telephone tip from Officer Tuggle is plainly material to the IAB investigation into whether Officer Estrada lied about receiving the tip. Thus, the only question that we need to address in this appeal is whether RR-112.2 applies to IAB investigations.

RR-112.2 is broadly worded; by its plain language it applies to “any investigation.” Consistent with its plain language, we construe RR-112.2 to apply to the Department’s IAB investigation of Officer Estrada’s denials of receiving the tip from Officer Tuggle.

Honesty and integrity are one of the fundamental values of the Denver Police Department. *See* DPD Disciplinary Handbook, Appendices A (Department Mission, Vision, Values) and B (Law Enforcement Code of Ethics). Officers have unwavering obligation to be honest and truthful in all aspects of their duties. This applies as much to IAB investigations as it does to any other investigation. Just because a misstatement or omission might not result in discipline under RR-112.2 in some other context does not relieve an officer from being completely truthful in an IAB investigation arising from or relating to that underlying investigation. In this case, Officer Estrada deliberately lied in the course of an official investigation. We determine that the Manager of Safety may impose discipline under RR-112.2 for such conduct.

We also reject the Panel’s argument that RR-312.2 implicitly preempts the application of RR-112.2 to Internal Affairs investigations. RR-312.2 states, in its entirety:

> An officer shall not engage in conduct or have direct or indirect contact with any witness, complainant, or investigator which is intended to obstruct, compromise,
or interfere with an internal investigation. Internal investigations shall include those initiated by the Internal Affairs Bureau, Manager of Safety’s EEO Coordinator, or anyone else to whom the Manager of Safety has delegated the authority to compel statements.

On its face, this rule encompasses a wide range of conduct that is intended to “obstruct, compromise, or interfere” with an internal investigation – such as hiding or destroying evidence, or urging third parties to lie during, or not participate in, an investigation. Officer Estrada’s behavior could have been construed to fall under this rule. Nevertheless, we do not believe that the Manager of Safety was precluded from applying RR-112.2 in this case. There is nothing in the text of RR-312.2 that either expressly or implicitly would preclude application of RR-112.2 to an Internal Affairs investigation. We decline to read such a provision into the rule.

We also reject the Panel’s conclusion that charging Officer Estrada with violations of both RR-112.2 and R-112.1 amounted to improper stacking of charges. As the Panel noted, stacking of charges is referenced in Section 31.8 of the DPD Discipline Handbook. The Handbook cautions that each charge or specification should address “separate or distinct conduct” or “a different aspect of or a different harm arising from the same conduct.”

Here, Officer Estrada repeated his denials during two separate investigations. In the first instance, during the course of the investigation into the hit and run and the Department’s failure to follow up on a tip, Officer Estrada lied to his supervisors about not having received the tip. The Panel properly held that this conduct amounted to a violation of RR-112.1.

In the second instance, however, we have a separate, distinct IAB investigation focusing on whether Officer Estrada lied when he told his supervisors that he had not received a call from another Officer involving information potentially relevant to the hit and run. During the course of that second investigation, Officer Estrada, though he had the opportunity and ability to admit
his prior untruthfulness, deliberately repeated the lie. This time, the lie was directly material to the issue being investigated, that being, whether he had been truthful in his prior statements. The lie told during the IAB investigation is a separate and distinct act from the lies told during the initial investigations into the hit and run, even though the substance of the denials is identical. Consequently, the prohibition against stacking was not violated.

CONCLUSION

Because we hold that an Internal Affairs investigation into an Officer’s truthfulness is encompassed within the meaning of RR-112.2, and because we hold that Officer Estrada’s lie about not having received a tip was material to the Internal Affairs investigation into whether he had been truthful in his prior statements to his supervisors, the Panel’s finding of ultimate fact with respect to the Officers’ violation of RR-112.2 is reversed. The Manager of Safety’s Departmental Order of Disciplinary Action in this case is affirmed in all respects.

Filed this 30th day of October, 2012.

FOR THE CIVIL SERVICE COMMISSION
CITY AND COUNTY OF DENVER

By: Earl E. Peterson
Executive Director