

DECISION AND ORDER

DANIELLE GUSSIE, Appellant,

v.

DENVER COUNTY COURT,
and the City and County of Denver, a municipal corporation, Agency.

The hearing in this appeal was held on December 13, 2016 before Hearing Officer Valerie McNaughton. Appellant appeared and represented herself. Assistant City Attorney Shelby Felton appeared for the Agency, and Kris Griffin served as the Agency's advisory witness. Kimberly Pooley and Kris Griffin testified for the Agency, and Appellant presented the testimony of Josephine Mendoza.

I. STATEMENT OF THE APPEAL

Appellant Danielle Gussie appeals her one-day suspension imposed on Sept. 20, 2016 by the Denver County Court. The parties stipulated to the admission of Agency Exhibits 1 – 18, and Appellant's Exhibit A - F.

II. FINDINGS OF FACT

Appellant was hired by the Denver County Court on Dec. 16, 2013. In Sept., 2015, she became a Judicial Assistant III in the Warrant Division, where her duties include processing and cancelling arrest warrants. Appellant's performance standards include accurate and timely updates according to legal guidelines, leading to no false arrests. [Exh. 4-1.] She is also subject to a departmental regulation which states that an employee may be disciplined for "a false arrest directly attributable to the employee" or an untimely cancellation of a warrant. [Exh. 1-1, 1-2.] The parties agree that an arrest based on a warrant that had been ordered cancelled by a judge is a false arrest in this context.

Warrants are cancelled by using two separate but communicating computer systems. THEMIS is the County Court's database for criminal cases which was developed by the Agency's Information Technologies (IT) Department. Once a judge has ordered the cancellation of a warrant, the Warrant Division is required to enter the cancellation order in THEMIS, and enter the same order in the database used by law enforcement agencies. The database consulted by police officers to determine the existence of an active warrant is known as CCIC (Colorado Crime Information Center) or CBI (Colorado Bureau of Investigation). Once that database is notified of the court order, they are to take all necessary action to cancel the warrant and avoid a false arrest. The Warrant Division cross-checks that a warrant has actually been cancelled in CCIC by viewing various indicators in the THEMIS and CCIC databases, or by reviewing the daily list of warrant

actions sent to the Division by CBI to confirm that the warrant has been cancelled.

On July 11, 2016, the Warrant Division was notified in CCIC that a person who shall be referred to as AC for privacy purposes was arrested and imprisoned for six hours based on a warrant that had been cancelled by a county court judge on Nov. 23, 2015. Appellant admits that she was the on-duty warrant officer on that date, and also admits that the warrant was not cancelled, leading to AC's arrest. Appellant's supervisor, Kimberly Pooley, investigated the matter and determined that Appellant cancelled AC's arrest warrant in THEMIS, but failed to cancel it in CCIC. Pooley sent Appellant the results of her investigation, and met with her on the day after the false arrest. [Exhs. 5 – 12.] At that meeting, Appellant told Ms. Pooley she did not recall the action, and said it could have been caused by a computer glitch because the screen shots do not show the correct information.

Ms. Pooley then sought more information from the Agency's IT Department. Its message logs showed that Appellant deleted the CCIC number assigned to the warrant a few minutes after the court clerk entered the order to cancel the warrant. [Exhs. 6-1, 14-2.] IT Associate Randy Simpson informed Ms. Pooley that he searched for a message in the CBI logs showing that the warrant had been cancelled, but did not find one. [Exhs. 11-1, 13-1, 17-1.] He concluded that "Danielle Gussie did not update any actions/events on this case. No warrant cancellation was ever sent to CBI by [Appellant.]" [Exh. 18-1.]

III. ANALYSIS

The Agency bears the burden to establish the asserted violations of the Career Service Rules by a preponderance of the evidence, and to show that a one-day suspension was within the range of discipline that can be imposed by a reasonable administrator based on the proven rule violations. Department of Institutions v. Kinchen, 886 P.2d 700 (Colo. 1994).

1. Neglect of duty, failing to meet performance standards, and violation of departmental regulations, under CSR §§ 16-60 A, K and L¹

As a Judicial Assistant III (JA3), Appellant is charged with a number of detailed and highly responsible technical functions related to the administration of the criminal justice system, under orders issued by a county court judge. [Exh. 4.] The main function of the Warrant Division is to issue, cancel and validate warrants. There are numerous specific steps to cancelling a warrant. On the THEMIS warrant window, known as the F2 or Warrant Window screen, a case can be selected by date or courtroom. [Exh. 15-1.] "Warrant cancellation" is selected from a drop-down box in the "filter" category. By clicking the "find" button, the "Actions" area below is populated. [Exh. 15-2.] The program then directs the user to review the judge's minute order, click the "reviewed" button if the order confirms that the warrant is to be cancelled, click on the blank box at the far left of the efile row, and press "Send". [Exh. 15-3.] That transmits the warrant cancellation order to CBI. When CBI receives the THEMIS message, it cancels the warrant. [Pooley, 9:03 am.]

¹ The disciplinary rules were substantially amended and renumbered on Feb. 12, 2016. Since the asserted misconduct occurred on Nov. 23, 2015, the Agency relied on the rules as they existed on that date.

A Warrant Division employee can verify that CBI has cancelled a warrant in several ways. If it is cancelled, the asterisk that appears to the right of the words "Party Status" on the F2 screen will be gone. [Exh. 15-2.] An employee can also go to THEMIS's F5 screen which shows the defendant's information, known as the "def info" screen. [Exh. 16-1.] If there is no asterisk behind "Party Status" and no entry WARCAN (meaning warrant cancelled) in the box below that, the warrant has not been cancelled by CBI. [Exh. 6-1.] A user can get specific details by pressing the warrant cancellation entry under the "Actions" section in the F5 screen. The screen that pops up will contain the court's order to cancel the warrant, and the date and time of that order in the "Date" box under the "Action" section. If the "Dispo Date" is the same as the date and time of the order, the warrant has not been cancelled. [Exh. 6-2.] Finally, a JA3 can log into CCIC using the OpenFox database. That will reveal a screen showing whether there is an active warrant. The DSD's separate Jail Management System will show whether a party is in custody, which has the effect of cancelling a warrant by means of the arrest. [Exh. 10.]

All of these methods were explained in detail at the hearing by Operations Supervisor Pooley. Her investigation revealed that, instead of telling CBI to cancel the warrant, Appellant simply deleted the CCIC number in THEMIS. [Exh. 16-1.] That too will delete the asterisk from the F5 ("def info") screen, but it will not result in a message to CBI to cancel the warrant. [Pooley, 9:32 am.] The Agency's IT Director Kris Griffin was the THEMIS developer. He examined the audit record behind Appellant entries. He testified that a warrant cancellation entry must include an XW in the line of code, and there is no such entry in the audit record for that case. [Exh. 13.] THEMIS shows that Appellant was in AC's computer case file at 2:34 pm, a few minutes after the court clerk entered the order to vacate the warrant and close the case. Appellant was logged out at about 3 pm for inactivity. [Exh. 17-1.] Griffin confirmed that Appellant cleared the CCIC number, and that the audit record shows no attempt to cancel the warrant. [Griffin, 10:08 am.] Appellant was the last employee to log into this case before the false arrest. [Pooley, 9:33 am.]

Appellant argues that she may have been locked out of AC's case on THEMIS by Sarah Mahoney (id code SAR), the court clerk who was in the file at the same time. [Exhs. A; 6-1.] In support of this argument, Appellant presented the testimony of Josephine Mendoza, who also works as a JA3 in the Warrant Division. Ms. Mendoza stated that she had seen a case where an asterisk was not present in THEMIS - an indication that there is no warrant - but OpenFox nonetheless showed an active warrant. Recently, the Division has required employees to check in OpenFox to confirm that a warrant has been cancelled. [Mendoza, 10:50 am; Exh. F.]

In response to these arguments, Mr. Griffin stated that if two people were trying to update the same field in a case at the same time, the party locked out would get a message: "You are the victim of a deadlock and have been locked out of THEMIS." That would require the "victim" to log back into THEMIS. Both the lockout and any subsequent login would generate messages. Griffin testified that there are no such messages in the audit record for this case. Ms. Pooley testified that JA3s are trained to use the above method in order to cancel a warrant, and notify a supervisor immediately of any problems. Pooley added that glitches causing lockouts have only been seen in family violence cases, and AC's case was based on a careless driving charge. [Pooley, 9:08 am.]

The evidence clearly shows that Appellant did not cancel the warrant on Nov. 23, 2015, or for six months thereafter. Based on this finding, the Agency established that Appellant neglected her duty to cancel the warrant in order to execute the court's order. AC's false arrest was directly attributable to Appellant, in violation of her clear and objective performance standard to take action necessary to prevent false arrests. Appellant did not testify, and therefore her arguments are insufficient to rebut the unequivocal evidence created by the database records. Based on this same evidence, the Agency also established that Appellant violated the Agency regulation making a false arrest a cause for discipline, in violation of § 16-60 L.

2. Carelessness in the performance of duty, CSR § 16-60 B.

As noted above, cancellation of a warrant requires two actions: entries into THEMIS and notification of CCIC to cancel the warrant. Under the facts of this particular case, the Agency established both neglect and carelessness, the latter by proof that Appellant failed to perform the second half of her duties by notifying CCIC of the order entered by the judge on Nov. 23, 2015.

3. Appropriateness of penalty under Career Service Rules

The Agency proved that Appellant violated all four of the asserted rule violations. Discipline is intended to correct performance and conduct issues by imposing the type and degree of punishment reasonably related to the seriousness of the offense, taking into consideration the employee's past record. CSR § 16-20. Here, Appellant was given a written reprimand six months before this incident for a false arrest in March, 2015. In that instance, Appellant selected the wrong originating agency in an unsuccessful attempt to cancel a warrant, but failed to notice that the asterisk was still present on the THEMIS case summary (F5) screen. The defendant in that case was arrested two months later, and held in jail until the error was discovered six hours later. [Exh. 3.] Given the serious loss of freedom caused by Appellant's failures to follow established procedures to cancel warrants, the minimal escalation of penalty from a written reprimand to a one-day suspension is on its face a reasonable exercise of the administrator's disciplinary judgment, consistent with the purposes of discipline under the Career Service Rules.

IV. ORDER

Based on the foregoing findings of fact and conclusions of law, the one-day suspension imposed on Sept. 20, 2016 is affirmed.

Dated this 21st day of December, 2016.



Valerie McNaughton
Career Service Hearing Officer