

**DECISION AFFIRMING 10-DAY SUSPENSION**

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**ANGELA BARRA**, Appellant,

v.

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

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**I. INTRODUCTION**

The Appellant, Deputy Angela Barra, appeals her 10-day suspension from the Denver Sheriff's Department (Agency), 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 February 10, 2017. The Agency was represented by Charles Mitchell, Assistant City Attorney, while the Appellant was represented by Reed Elkus and Zachary Wagner of the firm Elkus and Sisson, P.C. Agency exhibits 1, 4, 5, 7, 8, 13-15, 17, 19, 25, 27, 29, 31, and 50-52 were admitted, along with Appellant's exhibits B-E. The following witnesses testified for the Agency: Civilian Review Administrator Shannon Elwell and Major Jodi Blair. The Appellant testified on her own behalf during her 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): 16-60 A.<sup>1</sup>, 16-60 J., 16-60 L., as it pertains to Denver Sheriff Dept. Rules and Regulations (RR) 200.12; 400.8.2; and 400.8.3;
- B. if the Appellant violated any of the aforementioned Career Service Rules, whether the Agency's decision to suspend her for 10 days conformed to the purposes of discipline under CSR 16-20.

**III. FINDINGS**

Angela Barra has been a deputy sheriff in the Denver Sheriff's Department for 21 years. She had been assigned to the Downtown Detention Center (DDC) housing unit

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

for two years at the time of the incident underlying this appeal, including intermittently working on the second floor. Her main duties, as for all deputies, are to ensure the care and custody of inmates.

On September 25, 2013, Barra was working as the housing officer in the housing pod 2C from 2:30 p.m. to 2:30 a.m. the following morning. Duties for housing posts require deputies to remain in the pod unless they obtain relief from another officer, [Exh. 8-7], and to conduct at least one round every half hour of their 12-hour shifts, [Exh 8-6], but varying the specific time. Deputies must also log each round in the Agency's Jail Management System (JMS), and note the reason for any missed or incomplete rounds. [Exh. 8-7]. Barra understood those duties.

Barra conducted 14 of her 24 required rounds during her 12-hour shift, and did not note the missed rounds, or reason for missing them in JMS as required. She left her post three times during her shift, for a total of 24 minutes, each time without procuring a replacement or permission of the duty sergeant, leaving the 2C inmate housing pod without any deputy.

A pre-disciplinary meeting was held on December 16, 2015. The Appellant attended with legal counsel. During the meeting Barra acknowledged leaving her post and conducting only 14 of her required 24 rounds.

On December 30, 2015, some 27 months after the underlying incident, the Agency served its notice of discipline on Barra. This appeal followed timely on January 5, 2016.

#### IV. ANALYSIS

##### A. Jurisdiction and Review

Jurisdiction is proper under CSR §19-10 A.1.b., as the appeal of a suspension. 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 Barra violated one or more cited sections of the Career Service Rules, and to prove its decision to suspend her employment complied with CSR 16-20. The standard by which the Agency must prove its claims is by a preponderance of the evidence.

##### C. 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 the Appellant violated this rule by completing only 14 of 24 required rounds, [Exh. 1-10, 1-11] and thereby failing to ensure the care and custody of inmates.

The first alleged violation merely reiterates Barra's duty under RR 300.8.2, Failure to Make Required Rounds. No further discussion is warranted here, as no doubling of violations is permitted. In re Gordon, CSA 10-14, 2 (11/28/14), *see also* In re Wright, CSA 40-14, 7 (11/17/14).

The second violation alleges Barra's violation of the more generalized duty of all deputies to provide for the care and safety of inmates. [Exhibit 1-10; Elwell testimony]. In that regard: Barra acknowledged failing to make all required rounds; acknowledged leaving her post unattended, and acknowledged no other officer covered her post while she was absent. Those lapses constitute a violation of Barra's duty to provide for the care and safety of the inmates in her charge, in violation of CSR 16-60 A.

## **2. CSR 16-60 J. Failing to comply with the lawful orders of an authorized supervisor or failing to do assigned work which the employee is capable of performing.**

At issue here was the second proscription stated in the rule, failure to do assigned work. The Agency based its allegation on Barra's failure to make all assigned rounds. [Exhibit 1-11]. Barra acknowledged it requires only 2-3 minutes to make a round. She also acknowledged her post orders required her to make 24 rounds in her 12-hour shift, and that she made only 14 of those 24 required rounds on September 25, 2013. Barra claimed other duties, and the number of inmates to attend to alone, may have interfered with the completion of some of her rounds. [Barra testimony].

Since Barra acknowledged her duty to complete 24 rounds, and she did not, her acknowledgement, alone, is sufficient to establish a violation of this rule. With respect to Barra's claimed inability to complete some rounds due to other duties, she acknowledged even when other duties may interfere with rounds, she has other options such as seeking a relief officer, or calling a supervisor. At hearing, she suggested a relief officer "is not always available," but did not specify none was available that day. Moreover, video evidence showed three deputies in the adjacent corridor when Barra left her post the first time, [Exh. 17 @ 21:43], and engaged in conversation with another deputy the third time she left her post. [Exh. 19 @ 1:09]. She did not attempt to call a supervisor any of the three times she left her post. Thus, Barra failed to establish any exception to leaving her post on three occasions, in violation of CSR 16-60 J.

## **3. CSR 16-60 L. Failure to observe written departmental or agency regulations, policies or rules.**

### **RR 200.12 – Abandoning Post**

**Deputy sheriffs and employees shall not abandon their posts or duties until relieved without good cause, or by permission of a supervisor.**

The same facts that establish a violation of CSR 16-60 J., immediately above, also establish a violation of this rule. Barra's leaving her post three times, without procuring coverage or permission were abandonment of her post. Each of the three times she abandoned her post was a violation of RR 200.12, and therefore established a violation of CSR 16-60 L.

#### **RR 400.8.2 Failure to Make Required Rounds.**

##### **Deputy sheriffs shall not willfully or negligently fail to make their required rounds.**

The same facts which established a violation of CSR 16-60 L., above, regarding Barra's failure to make all her required rounds, also serve to establish a violation of this Agency rule. Barra was required to make 24 rounds during her shift on September 25, 2013. She acknowledged failing to do so, and she did not establish any exception or valid reason not to have complied.

#### **RR 400.8.3 Failure to Document Rounds**

##### **Deputy sheriffs shall not fail to document rounds where required.**

Here also, Barra acknowledged that she failed to document all her rounds on September 25, 2013. She also acknowledged she was aware of that requirement. Those facts, alone establish a violation of this rule. Barra stated "other duties" may have prevented her from documenting rounds and missed rounds. At the same time, she acknowledged it takes only a few seconds to record the rounds in JMS. She did not state why she did not subsequently note her missed rounds. By a preponderance of this evidence, the Agency proved Barra failed to document required rounds, in violation of RR 300.8.3 as it pertains to CSR 16-60 L.

### **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.

By failing to conduct all required rounds and leaving the pod unattended for 24 minutes, Barra violated the mission of the Agency, to provide for the care and safety of inmates. The Agency's election to suspend Barra was within the range of reasonable alternatives available to it, and complied with the presumptive penalty for those violations within the Agency's disciplinary matrix. [Elwell testimony; Exhibit 51 @ 94-95, Appendix E; *see also In re Economakos*, CSB 28-13, 2-3 (3/27/14); *In re Archuleta*, CSB 45-15, 3 (10/7/16)]. The Agency found Barra's prior discipline did not aggravate her penalty. [Exh. 1-15]. Barra acknowledged her wrongdoing and explained her ongoing commitment to correcting her mistakes.

Notwithstanding the forgoing, the Agency's unexplained delay of 27 months, from this uncomplicated incident until the Agency's issuance of discipline, was an

unconscionable delay. The Career Service Board has opined three times on long delays by the Sheriff's Department in investigating wrongdoing.

1. In its In re Leyba, CSB 59-14A (2/4/16) Decision, the Board considered the totality of the circumstances ("we have taken notice of...") including the lack of harm to the Agency, lack of damage to the working relationship between the Appellant and her supervisors, outstanding work evaluations, recommendations, commendations, Appellant's lack of recidivism, and her supervisors' belief that a written reprimand was sufficient. Leyba at p. 10. Similarly, the Board noted "years of expensive litigation would have be[e]n avoided" if a written reprimand had been imposed when first recommended by Barra's supervisors. The Board emphasized the delay of 26 ½ months between the underlying incident and the assessment of discipline was, "by the very nature of its untimeliness," unfair. The Agency assessed a 10-day suspension which the Hearing Officer reduced to four days. The Board further reduced the penalty to a written reprimand.

2. In its In re Leyba, CSB 31-16A (3/2/17) Decision, in affirming the Hearing Officer's upholding the Agency's 3-day suspension, the Board considered the security risk posed by Appellant's leaving a courtroom without obtaining backup, and failing to take a remanded inmate into custody immediately. In this case, the Board found the 16-month delay between the incident and the assessment of discipline did not require mitigation of the discipline.

3. In the just-announced In re Espinoza, CSB 14-16A (3/8/17) Decision, the Board affirmed the Hearing Officer's decision to affirm a 7-day suspension. The Board considered it was Appellant's second erroneous release in less than 3 months, and noted the 2<sup>nd</sup> erroneous release had a pronounced negative impact on the Agency. The Board, as in the second Leyba case, declined to find a 16-month delay between the incident and the assessment of discipline justified mitigation, even while finding the delay was "unacceptable and unjustified." The Board announced a requirement to show prejudice to the appellant resulted before mitigation due to a delayed discipline may attach.

In view of the Board's recent decision in Espinoza, the following findings enter with respect to prejudice. Barra testified her notice of discipline issued more than two years after the incident, and she did not remember exactly how many rounds she performed on a specific day more than two years earlier. However, during her pre-disciplinary meeting, when Barra's attorney offered that Barra conducted 16 out of the required 24 rounds, Barra immediately corrected him, stating she conducted only 14 rounds. [Exhibit 4-7]. Thus either Barra remembered her lapses at a time closer to the event, or adopted her attorney's earlier representation. No other testimony by Barra or other evidence even suggests any prejudice to Barra, and none is found. Accordingly, although the Agency's delay in assessing discipline after the underlying incident was unacceptable and unjustified, pursuant to Espinoza, no mitigation is due to Barra since she established no prejudice to her as a result of the undue delay.<sup>2</sup>

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<sup>2</sup> It remains to be seen if there is any amount of delay which would be deemed *per se* prejudicial.

## VI. ORDER

For reasons stated above, the Agency's 10-day suspension of the Appellant, assessed December 30, 2015, is AFFIRMED.

DONE March 10, 2017.



*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](http://www.denvergov.org/csa)

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

**Career Service Board**

c/o OHR Executive Director's Office  
201 W. Colfax Avenue, Dept. 412, 4th Floor  
Denver, CO 80202  
FAX: 720-913-5720  
EMAIL: [CareerServiceBoardAppeals@denvergov.org](mailto:CareerServiceBoardAppeals@denvergov.org)

**Career Service Hearing Office**

201 W. Colfax, Dept. 412, 1st Floor  
Denver, CO 80202  
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EMAIL: [CSAHearings@denvergov.org](mailto:CSAHearings@denvergov.org).

**AND opposing parties or their representatives, if any.**