CAREER SERVICE BOARD
CITY AND COUNTY OF DENVER, COLORADO
Appeal No. 21-18A

In the Matter of the Appeal of:

DARRELL JORDAN, Appellant - Petitioner,

v.

DEPARTMENT OF SAFETY, DENVER SHERIFF DEPARTMENT,
and the City and County of Denver, a municipal corporation, Agency-Respondent.

DECISION AND ORDER

Denver Deputy Sheriff Darrell Jordan (Appellant) was assigned to work the Building 20 Dorm in the Denver County Jail. One morning he was overseeing the service of breakfast to the inmates housed in his area. During that breakfast service, Appellant encountered some difficulty with inmate IN, who was relatively new to the facility and somewhat unfamiliar with its workings.

That morning, IN obtained his food tray and then attempted to get coffee to go with his breakfast. Appellant, however, refused to serve IN coffee because IN had brought the wrong cup. Evidently, IN was a big fan of the grits served at the jail, because after being refused coffee by Appellant, IN went to sit down at a table where he commenced trading food items with other inmates in exchange for more grits.

Some five minutes later, IN left the dining area but soon returned with a proper cup to obtain his coffee. Upon presentation of the proper cup to Appellant to obtain coffee, Appellant once again refused to serve IN coffee, this time, because the food line had closed.

The two briefly exchanged some unpleasantries with IN telling Appellant that he thought this was, among other things, "fucked up." Appellant responded, "Well, if you think this is fucked up, you ain't seen anything yet." The two argued a bit more, with IN believing the conversation to be over with one last "fuck you" to Appellant.

Appellant, however, was not ready to end things. He left his desk and went over to the table where IN was intending to eat his breakfast and ordered IN out of the room to a bench in the hallway. IN got up from his table and lifted his food tray, evidently believing he would be able to eat his breakfast out in the hallway.

Appellant approached IN and told him to put the tray down. The two re-

engaged in their "discussion." IN still wanted to take his tray with him so he could eat out in the hallway. Appellant refused to let him do that.

During this latest interaction, IN was standing, straddling the bench at his table, holding his tray about waist high. He lowered his tray as if to place it on the table, but then promptly re-raised it. Appellant then grabbed the tray from IN and flung it upward back at IN, and for a brief moment, it was raining grits – everywhere. It was a veritable grit storm. There were grits on IN, grits on Appellant, grits on the table, grits on the bench, grits on the floor, grits on the tray of another inmate, with the tray itself landing several feet behind IN.

The Denver Sheriff Department (Agency) investigated the matter. It determined that Appellant had engaged in misconduct which violated Career Service Rules which required Appellant to maintain a satisfactory working relationship with co-workers and other individuals (CSR 16-29(I)), and which required Appellant to comply with all internal Agency rules, in this case, the internal regulation which prohibited deputies from harassing prisoners (CSR 16-29(R) as applied to Agency Regulation RR-400.5). The Agency issued Appellant a thirty-day suspension which, per the Agency's Disciplinary Matrix, was a presumptive penalty for a second (within seven years)[1] Category D violation.

Appellant appealed his suspension to a Hearing Officer. The Hearing Officer upheld the suspension. Appellant now seeks review of the Hearing Officer's decision. We find no errors in that decision and AFFIRM the decision in its entirety.

Appellant first argues that the Hearing Officer's decision should be overturned based on a misinterpretation of Career Service Rule 16-29 which makes it a Rules violation for a "Failure to maintain satisfactory working relationships with co-workers and other individuals the employee interacts with as part of his or her job." This argument, however, is based on what Appellant believes to be the ***Agency's*** misinterpretation of the Rule and not the Hearing Officer's.

For example, at page 5 of his brief, Appellant claims that the Agency's disciplinary decision-maker (Civilian Review Administrator or CRA) testified that in his mind, under this rule, someone adopting a pet through the City or playing golf on a city-owned course is the same as a prisoner. Appellant refers to this as "ludicrous."[2] The Appellant, however, never addresses the Hearing Officer's decision or rationale on this issue.

We believe what the Hearing Officer did was listen to the testimony offered by the CRA and correctly determine that the thrust of his testimony was that Appellant's misconduct, that is, his interaction with prisoner IN, was covered by CSR 19-29(I). The Hearing Officer, in finding that Appellant violated this Rule, made reference to the

[1] Appellant had been suspended for ten days for use of inappropriate force. See our case No. 30-14A.
[2] Appellant's brief, page 4.

plain language of the Rule which covers not only co-workers, but also "other individuals the employee interacts with as part of his or her job." The Hearing Officer correctly determined that Deputies have a "working relationship" with inmates, in that their work creates a duty to maintain their care and custody. The Hearing Officer also correctly determined that the phrase "other individuals" does not exclude prisoners from the set of people with whom Appellant must maintain a satisfactory working relationship.

We do not believe the plain language of the rule limits its scope to customers engaged in commerce or other business transactions as suggested by the Appellant. If that had been the intent of the rule, it would have been written accordingly. The Hearing Officer did not misinterpret CSR 16-29(I).

Appellant next argues at page 5 of his brief that he should have been assessed a mitigated penalty. We have searched in vain for any argument demonstrating that the Hearing Officer, himself made any error requiring us to vacate or modify his decision. The Hearing Officer did not err and Appellant, evidently, does not claim that he did.

What Appellant does argue, however, is that the CRA failed to properly consider mitigating factors, and, as a result, acted improperly in issuing a non-mitigated penalty. First, as we have noted on numerous occasions, the fact that mitigating evidence might exist does not entitle a deputy to a mitigated penalty. In addition, we do not believe the mitigating evidence in this case was so overwhelming as to constitute an abuse of discretion on the part of either the CRA or the Hearing Officer for failing to impose a mitigated penalty.

In addition, Appellant's claim that the CRA failed to consider mitigating evidence is not borne out by the record. At page 5 of his decision, the Hearing Officer plainly noted that the CRA did weigh mitigating factors. The fact that the Hearing Officer and the CRA did not ascribe the same weight to the mitigating factors as Appellant wanted them to do, in this case, most certainly does not amount to error by either the CRA or the Hearing Officer.

Appellant next argues that the Hearing Officer disregarded evidence that Appellant, in essentially starting a food fight, "was attempting to maintain control over the dorm."[3] We do not believe the Hearing Officer disregarded evidence (which, in any event, was his absolute right to do) as much as we believe the Hearing Officer simply did not find this assertion by Appellant to be credible. Indeed, we do not see how throwing food at a prisoner is expected to accomplish the need of taking control over an unruly dorm.[4]

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[3] Appellant's brief, p. 7.

[4] There is scant evidence in the record indicating that the dorm itself was unruly, as opposed to IN individually, who at best, was verbally confrontational while trying to eat his breakfast.

Appellant next claims that the Hearing Officer erred in finding that Appellant violated CSR 16-29 as applied to RR-400.5 because Appellant allegedly had no malice in his heart when he made the threatening "you ain't seen anything" comment and when he flung IN's food tray out of his hands. Appellant also insists that whatever unpleasant situation IN found himself in was of his own making.

First, as a matter of logic, we disagree with this latter proposition. Absolutely nothing IN did compelled Appellant to threaten him. Nothing the prisoner did required Appellant to fling a tray full of food in IN's direction. Everything Appellant did to IN was intentional.

Second, we note that regardless of what intent Appellant had in his heart when he threatened IN and threw his food tray at him, the Hearing Officer's analysis and conclusions regarding RR-400.5 were thorough, reasonable and correct. The Hearing Officer, in deciding this issue, relied on the plain language of the rule as well as common definitions of words used in the rule to determine that Appellant' conduct towards IN amounted to malicious taunting, embarrassing, and harassing.

The Hearing Officer was free to reject Appellant's claim of a "pure heart," especially in light of his actions. Intent can be inferred from actions, and the Hearing Officer could reasonably infer a malicious intent on the part of Appellant when he threatened IN and when he threw IN's food tray, still full of food, at him.

Had the burden been on the Agency to prove by a preponderance of the evidence that Appellant violated RR-400.5, we would not hesitate, based on this record, to find that the Agency had met its burden. Accordingly, we have even less hesitation in agreeing with the Hearing Officer that Appellant has failed to meet his burden of demonstrating that the Agency was clearly erroneous in bringing these charges against Appellant.

Finally, Appellant argues that the decision to find him guilty of violating CSR 16-29(l) sets bad precedent because jailers cannot be expected to act as "customer service representatives" towards inmates. We do not believe, however, that applying his Rule to the jailer-inmate relationship does any such thing.

Rather, the rule only requires that the employee maintain satisfactory relationships with people whom they must work with. Precise standards and expectations may be different from situation to situation. But what is required in all cases is that employees treat people decently. Threats and food flinging, even in the jail and even when directed at prisoners, does not meet this very basic standard of conduct. We see no improper policy in requiring jailers to treat their inmates with dignity and respect.

For all of the above reasons, the Hearing Officer's decision is AFFIRMED.

SO ORDERED by the Board on November 1, 2018, and documented this 16th day of May, 2019.

BY THE BOARD:

Neil Peck, Co-Chair

Board Members Concurring: Karen DuWaldt, Tracy Winchester

CERTIFICATE OF DELIVERY

I certify that I delivered a copy of the foregoing **DECISION AND ORDER** on May 16, 2019, in the manner indicated below, to the following:

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For the Career Service Board