

**DECISION AFFIRMING DEMOTION**

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**PHAZARIA KOONCE**, 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 appeals her two-level demotion for alleged violations of specified Career Service and Agency rules. A hearing concerning this appeal was conducted by Bruce A. Plotkin, Hearing Officer on October 11, 2017. John Sauer and Kristin George, Assistant City Attorneys, represented the Agency, while the Appellant was represented by Donald Sisson, Esq. and Lucas Lorenz, Esq., of the law firm of Elkus & Sisson, PC. Agency exhibits 1-34 were admitted. Appellant's exhibits A, C, E, G, I-L and N were admitted. Sgt. Hitchcock, Ms. Ann DelNigro, and Shannon Elwell, former Civilian Review Administrator, testified for the Agency. Appellant testified on her own behalf.

**II. ISSUES**

The following issues were presented for appeal:

- A. whether the Appellant violated Career Service Rules (CSR) 16-29 A, R or T;
- B. if the Appellant violated any of the Career Service Rules, whether the Agency's decision to demote her two levels conformed to the purposes of discipline under CSR 16-41.

**III. FINDINGS**

The Appellant, Phazaria Koonce, has been employed with the Denver Sheriff's Department for 22 years. At the time of the incident underlying this appeal, she was a Captain, which is a management-level rank in the Agency.

On September 1, 2016, Division Chief Gary Wilson received a phone call from Alvertis Simmons, who is a close friend or relative of the family of former Denver Mayor Wellington Webb. Simmons told Wilson that Webb's granddaughter, who is also the niece of current Executive Director of Safety Stephanie O'Malley, had an active warrant for her arrest. Simmons and Wilson arranged for Webb's granddaughter to turn herself in.

On September 7, 2016, Wilson, who is Koonce's brother, telephoned Koonce to alert her that Simmons was going to accompany the former Mayor's granddaughter to turn herself in. Koonce was in charge of operations at the DDC, had no duties regarding the reception or processing of inmates, and was largely unfamiliar with those processes. [Exh. 9-7; 21-10].

The following day, September 8, Simmons called Wilson to tell him he was on his way with Webb. Wilson said, "give me a ring when you guys are in the lobby and I'll have someone come out and meet you guys." After being notified by Wilson, Koonce called Sgt. Eric Givens to assist her in obtaining Webb's warrant because she was unfamiliar with that process, and had never handled a remand in her entire career. [Exh. 1-23]. Givens had never taken anyone into custody on a warrant from the lobby of the DDC and didn't know the process. [Exh. 20-21].

Koonce told Givens her goal was to expedite Webb's appearance in court. "It's typically taken up to two to three days for people to get into court, so let's try and get her in to court before then." [Exh. 2-7; Exh. 23-5]. She asked Givens if he still knew people in the NCIC who could expedite the warrant-checking process.

Koonce and Givens met Simmons and Webb in the DDC lobby. Givens went to the ID bureau to retrieve Webb's warrant. He explained to the agent there that he was trying to expedite the process, as the warrant was for the granddaughter of the former Mayor. In her 12 years in the warrants division, the Agent had never been asked to expedite the book-in process for anyone other than for safety reasons such as a violent inmate. The Agent referred Givens to her supervisor. The supervisor later said it was the first time she had been asked to expedite a warrant because of a family relationship.

Givens told the supervisor he was trying to expedite Webb's warrant so that she could go to court the same day. The supervisor asked her manager to let the Commander of the unit, Commander Lisa Fair, know about the request. Fair accommodated Givens' request. The supervisor told her staff to expedite the process, which meant taking Webb's warrant out of sequence and processing her warrant before any others. The supervisor calculated expediting Webb's warrant saved several hours compared with the normal process. On a normal day it takes 12 to 18 hours to "clear" a warrant, on a slow day, 6 to 8. Webb's warrant was cleared in about two and a half hours. [Exh. 2-4]. Givens returned to the DDC lobby to meet Koonce and Webb with Webb's warrant.

The normal procedure for a self-reporting arrestee is to provide photo identification. The Information Officer then calls Intake and an officer comes to the lobby to handcuff, pat down the arrestee and walk them back to Intake. The inmate is escorted through metal detectors, with emptied pockets, and everything metal is removed. The inmate is searched again by facing the wall on footprints painted on the floor and a deputy searches them head to toe. The deputy then passes a wand called a Transfrisker over the arrestee's entire body to search for metal. Deputies also check inside of the mouth, bare feet, and shoes and socks are examined. Arrestees then walk through another metal detector, then stand for their photograph, after which they sit in a waiting area. In short, the intake process is extensive and exacting, in order to maximize security and to minimize mistakes.

Koonce conducted a cursory search of Webb, but did not handcuff Webb when she took custody of her in the lobby. Koonce walked Webb the wrong way, against the normal inmate processing direction, to the Intake area, did not have Webb pass through the metal detector or Transfrisker, did not thoroughly pat-search Webb as required in the Intake area, and did not require Webb to remove metal beads from her hair.

When Koonce and Givens arrived with Webb in Intake, Koonce told Sergeant Hitchcock, a 22-year veteran "that she was walking somebody through." [Exh. 9-2]. Givens asked Deputy Kirkbride for Webb's paperwork, announcing "I'm going to go take it to Records to try and get her to court the same day." Deputy Kirkbride felt it was not her place

to question superior officers Koonce and Givens, about the failure to follow normal procedures in the Intake area, but the incident created widespread gossip in the area about the special treatment afforded Webb.

Sgt. Hitchcock intervened, announcing "we're not walking anyone through." Givens protested "it's Mayor Webb's granddaughter," but Hitchcock replied, "I don't care about that, she's not walking through." Hitchcock later said it was not Koonce's function to take an inmate to Intake and described their route as "'cross-contamination' because everybody that's coming out already has their stuff and should be heading out... it's not an in-door."

Deputy Britton, also assigned to the Intake post, assumed Webb was being given a tour by Koonce and Givens since she was not handcuffed or searched. Deputy Sawyer approached Britton, telling him "that is former Mayor Wellington Webb's granddaughter and they want us to rush her through and this is bullshit and this is what Frank Gale got fired for and I'm not getting fired for it."

In the Records Department, Givens stood by as Kirkbride entered Webb's information, which Givens had carried in. Kirkbride found it highly unusual that Givens and Koonce had walked Webb through the process. Givens then told Sgt. Jordan that Webb needed to be rushed through the process. Jordan replied "we don't do that anymore. That's an unlawful order." The request reminded Jordan about the Frank Gale case.<sup>1</sup> He was sufficiently concerned to contact Captain Gutierrez who told Jordan to treat Webb like anybody else, and advised Jordan to call Chief Oliva to advise him what was happening. Deputies Jarock and Vigil overheard the exchange between Jordan and Givens and said about the attempted curtailed procedure "that isn't right." They approached their supervising Sergeant, Hitchcock about it and were told "we don't rush anybody through the process. She will get processed just like everybody else." Jarock and Vigil, who photographed new inmates and dealt with the ID Bureau daily for a long time said, "we've never seen anybody's fingerprints clear that quick, even on days like holidays when we're really slow."

After Jordan contacted Chief Oliva about the kerfuffle caused by Koonce's unusual treatment of Webb, Oliva called Koonce and directed her to ensure there was no preferential treatment for Webb. Executive Director of Safety Stephanie O'Malley sent an email to Sheriff Firman directing him to treat Webb the same as any other inmate.

Koonce was served with a contemplation of discipline letter on March 30, 2017. A contemplation of discipline meeting was held on May 11, 2017, which Koonce attended with her attorney. On June 8, 2017, the Agency served its notice of demotion from Captain to Deputy on Koonce, signed by the decision-maker, Shannon Elwell, Civil Review Administrator [Exhibit 1]. The appeal followed timely on June 14, 2017.

## IV. ANALYSIS

### A. Jurisdiction and Review

Jurisdiction is proper under CSR §19-10 A.1.b, as the direct appeal of an involuntary demotion. 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).

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<sup>1</sup> In re Gale, CSA 02-15 (11/23/15), *aff'd In re Gale*, CSB 02-15A (7/21/16). Chief Gale was fired for instructing subordinates to allow an inmate who was also a Sheriff Department Captain, to leave through the front door of the courtroom after the Captain's court appearance rather than being processed out in the normal fashion, then lying about his instructions.

## **B. Burden and Standard of Proof**

The Agency retains the burden of persuasion, throughout the case, to prove Koonce violated one or more cited sections of the Career Service Rules, and to prove its decision to demote Koonce two classification levels, from Captain to Deputy, complied with CSR 16-41. The standard by which the Agency must prove its claims is a preponderance of the evidence.

## **C. Career Service Rule Violations**

### **1. CSR 16-29 A., Neglect of duty or carelessness in performance of duties and responsibilities.**

To the extent the notice of discipline referred to a duty other than those specified in the other cited rules, the notice declared "Koonce also neglected her general duty to adhere to all policies and procedures (of which she herself should be most familiar) and recognize and correct violations such as preferential treatment when she observed it. However, not only did Captain Koonce neglect her duty to adhere to all policies and procedures and recognize and correct violations, she actually initiated, directed, and participated in the violations of policies and procedures listed above." Such conclusory statements fail to identify any duty not otherwise identified by another specific rule, and fail to provide notice of what wrongdoing may have violated this rule. No other allegation of neglect or careless performance of a duty was otherwise apparent in the first paragraph citing CSR 16-29 A. The Agency failed to establish a violation of CSR 16-29 A. by a preponderance of the evidence.

The Agency's notice of discipline also included CSR 16-29 A. in a separate paragraph allegedly identifying wrongdoing under that rule as "[Koonce] neglected her duty to handcuff the wanted party behind the back..." as well as "failed to thoroughly search [Webb] when required to do so." These duties derive from the Reception Desk Post Order, [Exh. 2-16 @ E.3.], and from the Intake desk procedures. Finally, the decision maker, Civilian Review Administrator Shannon Ewell, testified the basis for the charge of neglect was Koonce's showing a partial attitude toward Web, failing to understand Agency rules as they relate to the effect on her subordinates, and failing to treat everyone equally. Those additional allegations fail to establish any duty aside from the other violations, or notice thereof. No violation was established by these allegations under CSR 16-29 A.

### **2. CSR 16-29 R., Conduct which violates the Career Service Rules, the City Charter, the Denver Revised Municipal Code, Executive Orders, written departmental or agency regulations, policies or rules, or any other applicable legal authority. When citing this subsection, a department or agency must cite the specific regulation, policy or rule the employee has violated**

#### **Denver Sheriff Departmental Rules and Regulations**

##### **300.19.1 Disobedience of Rule**

**Deputy Sheriffs and employees shall not violate any lawful Departmental rule (including CSA rules), duty, procedure, policy, directive, instruction, order (including Mayor's Executive Orders, or Operations Manual section.**

**Denver Department of Safety, Denver Sheriff Department, Downtown Detention Center, Reception Desk Post Order.**

## **Warrants**

**Taking Custody - When taking custody of an individual, the responding Intake Officer shall conduct the following steps:**

**Handcuff the wanted party behind the back and conduct a cursory search of the individual**

**Place all small property items found during the cursory search in to a clear property bag along with the arrest documentation**

This rule makes it apparent that any officer taking an individual into custody is responsible for handcuffing that individual. Koonce acknowledged she did not handcuff Webb when she took custody of her in the DDC lobby, nor at any subsequent time while in her custody. Koonce's acknowledgment constitutes a violation of this Order which, in turn, constitutes a violation of CSR 16-29 R. No evidence was presented regarding the second part of this rule.

### **300.21.2 Impartial Attitude**

**Deputy sheriffs and employees shall maintain a strictly impartial attitude in the performance of their duties.**

This rule encompasses the duty to avoid preferential treatment. [*In re Wilson*, CSA A038-17 (12/8/17)]. The Agency alleged Koonce's actions violated this rule in the following ways. She met Webb in the lobby of the DDC, remained with her through much of the intake process, walked her to Intake the wrong way through the Release door and into a different Intake entrance than other inmates would use, failed to handcuff her as required of all other inmates, failed to take Webb through a metal detector, failed to conduct a thorough search, failed to remove metal beads from Webb's hair and directed a subordinate, Givens, to expedite Webb's paperwork so that Webb might be seen by a judge quicker than any inmate normally would.

Without denying the allegations above, Koonce claimed she treated Webb as the Agency should strive to treat all arrestees, that it takes too long to process inmates, and she and Givens only engaged in good customer service by expediting the intake procedure as much as possible. [Exh. 1-4, 1-5].

Koonce's implementation of her good customer service policy had a sample size of one - the ex-mayor's granddaughter. She did not ask Givens to expedite the warrant for anyone other than Webb. That one-only implementation of a "policy" is precisely the kind of conduct proscribed by the rule against demonstrating a partial attitude. Koonce's expediting and directing a subordinate, Givens, to expedite the intake and processing of an inmate constitutes a violation of RR 300.21.2.

### **300.11.6 Conduct Prejudicial**

**Deputy Sheriffs and employees shall not engage in conduct prejudicial to the good order and effectiveness of the department or conduct that brings disrepute on or compromises the integrity of the city or the Department or conduct unbecoming which:**

- a. May or many not specifically be set forth in the Department rules and regulations or the Operations Manual; or**
- b. Causes harm greater than would reasonably be expected to result, regardless of whether the misconduct is specifically set forth in Department rules and regulations or the Operations Manual.**

The Agency's notice of discipline specified Koonce violated RR 316.11.6, along with all the other rules it cited, for a variety of reasons that were unrelated to RR 316.11.6, or where the connection to this rule was not apparent. [ See Exh. 1-27 to 1-29]. In the only portion of its notice of discipline that specified the basis for finding a violation of RR 316.11.6, the Agency stated as follows.

Koonce engaged in conduct prejudicial when she initiated, directed, and participated in affording a perceived politically connected inmate preferential treatment by expediting her through the booking process. In doing so Captain Koonce demonstrated partiality in the performance of her duties, as well as behavior that was unprofessional and unbecoming a Denver Sheriff Department Captain and City employee. In engaging in the above conduct, Captain Koonce did not "conduct [herself and [her affairs in a manner that reflects the standards and professionalism of the Denver Sheriff Department," nor did she adhere to the Guiding Principles or Vision of the Department."

[Exh 1-29].

The Agency also noted Koonce:

... caused confusion and fear among her subordinates, which was detrimental to the good order and effectiveness of the department... it placed subordinates in jeopardy of unjustified discipline and led to an environment in which "all hell broke loose" among veteran officers who were fearful of being disciplined and held responsible for carrying out orders that were so clearly in flagrant violation of commonly understood policies and rules...The IAB file contains multiple complaints and statement by involved deputies express in their shock and dismay at being placed in a position where they would have to violate policy at the behest of a superior officer. Especially upsetting to them was the compelling fear of retaliation for reporting Captain Koonce's misconduct.

The language in the paragraph immediately above included sufficient reference to the language of RR 300.11.6 to constitute notice of an allegation under that rule. Specifically, the following subordinates were concerned that Koonce's treatment of Webb was contrary to the rules and norms of the Intake Division. In referring to Koonce's treatment of Webb, Sgt. Jordan told IAB he "didn't think that was right because 'we wouldn't have done it for other inmates..." Jordan noted the similarities to the Gale case. [Exh. 8-6]. Deputy Vigil called the request to expedite Webb "an unlawful order." [Exh. 11-3]. Deputy Kirkbride stated she had the impression Webb was going to be treated differently. [Exh. 6-6]. Deputy Foos told IAB Webb's warrant "cleared quicker than the other inmates." [Exh. 7-13]. Koonce's instruction to Givens to expedite Webb's warrant clearance and appearance in court caused Givens to instruct Denver Police Department employees to go up their chain of command in order to acquire approval for what all of them deemed a unique request that gave preference to Webb. [Exhs. 1-11; 4-4; 5-12]. Those concerns escalated to the highest levels of the Department of Safety, and caused a Chief, a Major and the Executive Director of Safety to issue decrees to countermand the effect of Koonce's attempts to expedite Webb's intake and court appearance.

These statements, by those who directly observed the results of Koonce accompanying Webb to intake and directing that her intake be expedited, constitute proof that Koonce's conduct was prejudicial to the good order of the Agency under RR 300.11.6.a.

In addition, some subordinates feared for their careers. [Exh. 8-6; 15-6; 17-7]. Deputies Vigil and Jarock believed Koonce's actions were "not right," and felt compelled to ask their supervisor what to do. Deputy Sawyer worried out loud to Deputy Britton "they want us to rush her through and this is bullshit and this is what Frank Gale got fired for and I'm not getting fired for it." [Exh. 15-6]. Sgt. Jordan was worried that "he didn't like the looks of this," that being the expeditious treatment of an

inmate by Koonce. [Exh. 8-6]. That concern caused Jordan to contact Captain Gutierrez for guidance. He also worried about the similarities of Koonce's treatment of Webb to the Gale case.<sup>2</sup> Koonce's conduct caused unnecessary consternation to subordinates over potential discipline against them because of Koonce's wrongful conduct. That result is conduct unbecoming an officer which caused harm greater than would reasonably be expected to result – a credible threat to the careers of subordinates – in violation of RR 300.11.6.b.

#### **400.17 Failure to Search**

**Deputy Sheriffs shall not fail to thoroughly search a prisoner, vehicle or building area when required to do so.**

Koonce did not dispute that, in accompanying Webb to Intake, she failed to conduct a thorough search of Webb; nor did she dispute that such thorough search is required of all arrestees at Intake. Her acknowledgment constitutes a violation of this rule.

### **3. CSR 16-29 T. Conduct which is or could foreseeably:**

#### **1. Be prejudicial to the good order and effectiveness of the department or agency;**

The proof above, that Koonce violated the identical language in RR 300.11.6 a., above, constitutes a violation of this subsection of CSR 16-29 T.

#### **2. Bring disrepute on or compromises the integrity of the City...**

The Agency's alleged proof of this violation was a conclusory statement that "Koonce's misconduct led to subsequent disrepute on the image and integrity of the Department, as reflected in various media articles." [Exh. 1-29]. News coverage of an event, alone, is not proof of disrepute or compromised integrity, and no news article was provided that might have provided such evidence. This claim fails for lack of any evidence.

#### **3. Be unbecoming of a City employee.**

The Agency presented no independent evidence of this violation beyond a conclusory statement. No violation was established under this subsection.

## **V. DEGREE OF DISCIPLINE**

The purpose of discipline is to correct inappropriate behavior if possible. Appointing authorities are directed by CSR 16-41 to consider the seriousness of the offense, an employee's past record, and the penalty most likely to achieve reform of the misconduct or poor performance. CSR 16-41.

### **A. Seriousness of the proven offenses**

The Agency's disciplinary matrix permits penalties beyond the maximum in the aggravating range. In re Wilson, CSA 38-17, 14 (12/8/17). In order to depart from the presumptive and aggravated penalty ranges, the conduct justifying extraordinary penalties need to "be documented," and the discipline must "be reasonable under the circumstances, [and] be justified by the facts of the case." Such deviation is guided by the analysis contained in Section 25.0 of the Matrix. [Matrix § 14.1.1].

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<sup>2</sup> Not all these deputies testified, potentially raising some question about the hearsay statements in their IAB reports; however, the consistency of those statements compared with witness testimony provides sufficient indicia of reliability to accept those hearsay statements [Indus. Claims App. Office v. Flower stop. 782 P.2d 13 (Colo. 1989)].

The Agency proved more egregious misconduct by Koonce than it did for Chief Wilson. The following distinctions are notable.

Koonce used her position to induce multiple and substantial departures from established safety protocols by reluctant subordinates. In doing so, she abused her authority. See In re Jochem, CSB 25-15 (10/6/16).

Koonce went well beyond Wilson's request simply to meet Webb and Simmons.

She bypassed or ignored many established intake procedures.

Subordinates who witnessed and bowed to Koonce's bypassing of safety protocols were justifiably alarmed.

Koonce's actions caused sufficient concern to rise to the highest levels of the Agency. It required the explicit intervention of higher-ranking officers and the Executive Director to reverse Koonce's malfeasance and restore order.

Koonce's aforementioned conduct was extraordinarily aggravating based on its profound actual and potential effect on subordinates' careers (in particular that of Givens<sup>3</sup>), its disruption of operations, and based on her ignorance or intentional violation of multiple safety protocols by a high-ranking officer. Those extraordinarily aggravating factors make departure from the Matrix reasonable under these circumstances. Special circumstances justifying such departure were justified by these facts and circumstances, in conformance with the Agency's disciplinary matrix. [Matrix § 14.1.1; § 15.0 *et seq*; § 17.2; § 25.4; § 25.5].

## **B. Prior Record**

The Agency removed Koonce from the rank of acting Major in 2013 following its investigation into approximately 20 complaints that she was "retaliatory, humiliating, and abusive" toward subordinates. [Exh. 1-7]. She was issued a written reprimand for discourtesy on July 31, 2013. The present case indicates a continuing lack of awareness of the effect of her actions on subordinates, demonstrates her inability or unwillingness to conform to expected standards of conduct, and therefore justified a substantial penalty. [See also Matrix § 25.4, 25.5].

## **C. Likelihood of Reform**

Koonce's denial of wrongdoing make it uncertain whether she will reform the misconduct in this case. Much of that concern is alleviate by removal of her from a supervisory position. Her prior violation, along with her present denial of having negatively affected subordinates, present a valid argument against the likelihood of reform.

## **D. Additional factors.**

Based on the seriousness of the established violations, the pronounced effect of those violations on subordinates, the ignorance of safety protocols, and repeated denial of accountability, the Agency established Koonce currently lacks the fitness and trustworthiness to perform the functions of of a supervisor. [See Exh. 36-36 through 36-37].

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<sup>3</sup> Givens was disciplined for his role in Koonce's misconduct. His discipline could affect his potential for advancement. [See Matrix § 6.3]. Many subordinate officers and employees who assisted Koonce and Givens, or acquiesced to their wrongdoing were required to give statements to the IAB under a Garrity advisemen. That experience undoubtedly created concern that they might also be disciplined.

## VI. ORDER

The Agency's two-level demotion of Koonce from Captain to Deputy on June 8, 2017, is AFFIRMED.

DONE December 22, 2017.



Bruce Plotkin  
Career Service Board Hearing Officer

### NOTICE OF RIGHT TO FILE PETITION FOR REVIEW

You 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 decision's certificate of delivery. See Career Service Rules at [www.denvergov.org/csa](http://www.denvergov.org/csa). **All petitions for review must be filed with the following:**

#### **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  
FAX: 720-913-5995  
EMAIL: [CSAHearings@denvergov.org](mailto:CSAHearings@denvergov.org).

AND opposing parties or their representatives, if any.