

ORDER ON APPELLANT'S MOTION FOR DISCOVERY

STEVEN ROYBAL, Appellant,

v.

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

On July 26, 2016, Appellant filed a motion seeking one discovery request (L) from the Agency. The Agency objected that the request is unduly broad and burdensome, and is not likely to lead to the discovery of information relevant to the appeal.

This is Deputy Sheriff Roybal's appeal of his dismissal based on a use of force incident and asserted untruthfulness during the investigation. Appellant seeks the past 36 months of disciplinary decisions for discipline involving violations of the three substantive departmental regulations found by the Agency in this matter: DO 5011.1M and RR 300.22 regarding inappropriate force, and RR 200.4.2 prohibiting commission of a deceptive act.

Appellant is challenging the level of discipline imposed by the Agency, claiming it was not done in accordance with the DSD Disciplinary Matrix and is unduly harsh. He seeks the above described discovery for the purpose of proving that dismissal is not consistent with discipline imposed in similar cases. Appellant argues that the Career Service Board has reduced the Agency's penalty where similar violations resulted in varying levels of discipline. In re Ford, 48-14A, 7-8 (CSB 9/17/15). However, that decision was based on findings that there was no deceptive conduct or intent to punish the inmate. It was also based on a comparison of several highly similar scenarios after a full hearing on the merits. In contrast, Appellant's motion gives no basis for its implicit argument that the production of three years of disciplinary letters involving those rules would yield any information that may be relevant to the issues at hearing. Even if Appellant had raised a discrimination case, he would be required to show on the issues of motive or pretext that all the relevant employment circumstances, including work history, render him similarly situated to the claimed comparable employees. That presents the danger of re-litigating other discipline claimed to be comparable to Appellant's. Here, Appellant has no burden to establish the elements of a discrimination claim. As we have noted, discipline imposed on other employees is not relevant unless the circumstances are alike in all important respects. See In re Napoli, CSB 74-10, 3 (8/18/11), In re Simpleman, CSB 31-06, 2-3 (8/2/07).

il find that the request is overly broad, and not limited to highly similar disciplinary circumstances which could support his argument that this discipline was inconsistent with the the Agency's treatment of other employees, and for that reason violative of CSR § 16-20.

Order

Appellant's motion for discovery is denied.

DONE August 3, 2016.

A handwritten signature in black ink that reads "Valerie McNaughton". The signature is written in a cursive style with a large loop at the end of the last name.

Valerie McNaughton
Career Service Hearing Officer