

CAREER SERVICE BOARD, CITY AND COUNTY OF DENVER, STATE OF COLORADO

Appeal No. 07-09 A.

FINDINGS AND ORDER

IN THE MATTER OF THE APPEAL OF:

COREY S. PAZ

Appellant/Petitioner,

vs.

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

Agency/Respondent.

This matter is before the Career Service Board on Appellant's Petition for Review. The Board has reviewed and considered the full record before it and **AFFIRMS** the Hearing Officer's Decision of July 28, 2009, as follows.

FINDINGS

Appellant was terminated from his employment as a deputy sheriff for fifteen separate occurrences of absenteeism and acts of dishonesty during an internal affairs investigation, including a false and misleading claim of FMLA leave. He also had an extensive disciplinary history of leave abuse and dishonesty that included several written reprimands and a three day suspension. He had been counseled about his absenteeism on more than one occasion prior to his termination. The Hearing Officer affirmed the Agency's decision to terminate employment.

On appeal to the Board, Appellant argues that the Hearing Officer's findings on dishonesty are not supported by the record. However, when an appellant raises sufficiency of the evidence as a basis for appeal under CSR 19-61 D., it is not enough to simply order a transcript and designate hearing exhibits as the record on appeal; an appellant must provide specific citations to the record to support his argument. It is not the Board's responsibility to sift through the record looking for evidence that may support or refute an argument made on appeal. Here, Appellant's brief contains no citations to the record and therefore he has failed to meet his burden of demonstrating that the Hearing Officer's decision is not supported by the record and is clearly erroneous.

Next, Appellant contends the Hearing Officer's decision is an erroneous interpretation of the rules under CSR 19-61 B. However, he does not cite any career service rule as being erroneously interpreted. Instead, he argues that the Hearing Officer failed to apply the terms of the collective bargaining agreement (CBA) entered into by the City and the employees of the Denver Sheriff's Department.

We have already determined that the career service hearing officer does not have subject matter jurisdiction over the provisions of the CBA. *In re the Matter of Rachel Espinoza*, Appeal No. 30-05. The exclusive remedy for the determination of an employee's contractual rights under the CBA is the grievance procedure outlined in the CBA, which includes the requirement of mandatory arbitration. (Agency Exhibit 16, Art. 21). Moreover, although Appellant worked for a law enforcement agency within the City, nevertheless, he was a career service employee and his conduct and the Agency's imposition of discipline were controlled by the career service rules, not the collective bargaining agreement.

As a final argument, Appellant contends that the discipline imposed upon him in this case is "not in line" with other discipline imposed throughout the City and this perceived disparity creates a policy setting precedent allowing discipline to be imposed inconsistently. Opening Brief, pp. 10-11. We do not find this argument persuasive.

The purpose of discipline under the career service rules is embodied in CSA 16-20:

The purpose of discipline is to correct inappropriate behavior or performance, if possible. The type and severity of discipline depends on the gravity of the offense. The degree of discipline shall be reasonably related to the seriousness of the offense and take into account the employee's past record. The appointing authority shall impose the type and amount of discipline he or she believes is needed to correct the situation and achieve the desired behavior or performance.

Thus, the reasonableness of discipline within the career service personnel system is determined by the factual circumstances presented in each case, not upon comparisons with other City employees.¹

ORDER

IT IS THEREFORE ORDERED that the Hearing Officer's Decision of July 28, 2009, is **AFFIRMED**.

¹ Denver City Charter §9.4.15 F specifically provides that a member of the classified service (police and fire) may appeal a disciplinary action on the grounds that the discipline imposed is inconsistent with the discipline received by other members of the department under similar circumstances. The Charter contains no such provision for employees within the career service system.

SO ORDERED by the Board on January 7, 2010, and documented this 21st day of January, 2010.

BY THE BOARD:



Tom Bonner, Co-Chair

Board members concurring:

Luis Toro
Nita Henry
Patti Klinge

Board member Felicity O'Herron did not participate in the Board's decision.

CERTIFICATE OF DELIVERY

I certify that I delivered a copy of the foregoing **FINDINGS AND ORDER** on January 21, 2010, in the manner indicated below, to the following:

David J. Bruno, Esq.	<u>DBruno@bcjipc.com</u>	(via email)
Andrea Kershner, Asst. City Attorney	<u>dlefilng.litigation@denvergov.org</u>	(via email)
Mary Malatesta, Deputy Manager of Safety	<u>Mary.malatesta@denvergov.org</u>	(via email)
William R. Lovingier, Undersheriff	<u>Bill.Lovingier@denvergov.org</u>	(via email)
CSA Hearing Office	<u>CSAHearings@denvergov.org</u>	(via email)



Leon Duran