

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

Appeal No. 28-16A

In the Matter of the Appeal of:

ANNA ROMERO,

Petitioner-Appellant,

v.

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

Respondent-Agency.

DECISION AND ORDER

Denver Deputy Sheriff Anna Romero (Appellant), and several other deputies, were escorting a highly intoxicated and possibly suicidal prisoner to a cell. Upon arriving at the cell, the deputies attempted to get the prisoner into a suicide smock. To accomplish this, the deputies required the prisoner to remove all of her clothing. The prisoner, who had already been verbally hostile and resistive towards the deputies, complied, though was obviously none too happy about it. She took off her shirt and threw it onto the cell floor. She then took off her pants and kicked them at Appellant's feet. Appellant then walked over to the prisoner and yanked her hair.

The incident was investigated. The Civilian Review Administrator for the Denver Sheriff Department (Agency) determined that Appellant's hair pull of the intoxicated prisoner served no correctional purpose, exhibited poor judgment on Appellant's part and constituted an inappropriate use of force, all in violation of Departmental rules and policies. Appellant was issued a ten-day unpaid suspension.

Appellant appealed her suspension to a Hearing Officer. The Hearing Officer determined that Appellant had pulled the hair of the prisoner as alleged in the charges brought against her. The Hearing Officer also determined that Appellant pulled the prisoner's hair out of anger or frustration towards an extremely difficult inmate, ignoring her training and failing to use good judgment. The Hearing Officer further determined that the hair pull amounted to a use of inappropriate force as no force was necessary under the circumstances at the time and

that the hair pull had the effect of angering the prisoner inciting her to rush at the other deputies in the cell. Finally, the Hearing Officer determined that the ten-day suspension was an appropriate penalty for Appellant's misconduct.

Appellant has appealed the Hearing Officer's decision, but has limited the scope of her appeal to a claim that the Hearing Officer erred in failing to reduce the penalty imposed on her to one within the Matrix mitigated range for her offenses. We do not believe the Hearing Office erred by failing to reduce Appellant's punishment.

The predominance of Appellant's argument involves comparing her misconduct and penalty to those of other disciplined deputies' and arguing that her punishment is out of line or excessive compared to what other deputies received as punishment for misconduct of varying severity. Appellant urges us to engage in her comparative discipline analysis based on our holding in *In Re Thomas Ford, No. 48-14A*.

We believe Appellant has misconstrued the import of our *Ford* decision. *Ford* was never intended to and does not create a strict comparative discipline system within the Sheriff Department. Instead, *Ford* warns the Agency that the imposition of discipline which is or appears to have been arbitrarily imposed will not be tolerated. (*Ford*, p. 4, 2nd full paragraph; p.6, 1st full paragraph.)

Based on the record before us, we do not believe that the ten-day suspension was arbitrarily imposed. Rather, the record reflects sufficient, reasonable, and articulated justification for the issuance of the ten-day suspension. In addition, we do not believe the record demonstrates that a ten-day suspension is excessive. If Appellant's comparative analysis proves anything, it is that prior discipline issued under the matrix was too lenient. Indeed, this Board has noted as much before. See, e.g., *In Re Brady Lovingier*, no. 48-14A, p2, n.5. We find that the ten-day suspension was within the range of alternatives available to a reasonable administrator.

In addition, we do not believe the Agency improperly imposed a Matrix presumptive penalty as opposed to a Matrix -mitigated penalty and we do not believe the Hearing Officer erred in failing to reduce the penalty to one in the Matrix-mitigated range. Both the Agency's and the Hearing Officer's record justification for their penalty determinations are reasonable, supported by the record, and are not an abuse of discretion or otherwise improper. We see no facts or policy justification presented by this record causing us to believe the Hearing Officer erred in upholding the Agency's penalty or otherwise compelling us to reduce the imposed penalty.

Finally, we do not agree with Appellant that the imposition of the ten-day suspension sets improper precedent. In fact, we do not see this penalty implicating any precedent at all. The imposition of this penalty does not appear to be the product of a blind following of precedent, nor would it have the effect of setting a precedent to be followed blindly in the future. Rather, we see this disciplinary action as a reasoned decision based on the unique facts

of this case and an individualized application of the principles embodied in the Agency's disciplinary Matrix. We do not believe this discipline sets bad policy or precedent.

For these reasons, the Hearing Officer's decision is AFFIRMED.

SO ORDERED by the Board on February 2, 2017, and documented this 15th day of June, 2017.

BY THE BOARD:



Co-Chair

Board Members Concurring:

Gina Casias _____

Neil Peck _____

Patricia Barela Rivera _____