

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

Appeal No. 58-07 A

FINDINGS AND ORDER

IN THE MATTER OF THE APPEAL OF:

TIMOTHY SANDROWSKI,

Appellant/Respondent,

vs.

DEPARTMENT OF PUBLIC WORKS, STREET MAINTENANCE DIVISION,
and the City and County of Denver, a municipal corporation,

Agency/Petitioner.

This matter is before the Career Service Board ("Board") on the Agency's Petition for Review. The Board has reviewed and considered the full record before it and **AFFIRMS** the Hearing Officer's Decision dated February 6, 2008, on the grounds outlined below.

I. JURISDICTION

The Agency initially petitioned the Board for review under CSR 19-61 B. (erroneous rules interpretation), 19-61 C. (policy setting precedent), and 19-61 D. (insufficiency of the evidence). However, in its opening brief, the Agency withdrew its petitions based on CSR 19-61 C. and D., and therefore, the only issue before the Board is whether the Hearing Officer erroneously interpreted two career service rules: CSR 16-60 B. (carelessness in performance of duties) and 16-60 K. (failure to meet established standards of performance).

II. FACTUAL BACKGROUND

Appellant was dismissed from his employment because he was involved in a traffic accident that resulted in injury. On the day of the accident, Appellant was driving westbound on Colfax Ave. in the right lane, operating a 50-foot truck and trailer. A bicyclist, also traveling westbound on Colfax, moved from the right lane into a bus lane that ends at the intersection of Downing St. Both the bicycle and the truck continued through the intersection where the right lane began to narrow. According to the Hearing

Officer, the evidence was undisputed that the bicycle's left handlebar hit the truck's trailer at the back right side. However, the place where the truck passed the bicycle, the place where the accident occurred, and which party had the right of way were very much in dispute.

After reviewing the evidence the Hearing Officer made the following findings: When the bicyclist moved into the bus lane, he gave up right of way to traffic traveling in the right lane. Appellant properly passed the bicycle while it was in the bus lane east of Downing St. Appellant entered and cleared the intersection well before the bicyclist. West of the intersection, the bicyclist merged back into the right lane and caught up with Appellant's trailer as traffic slowed ahead. The bicyclist tried to overtake Appellant's vehicle on the right by riding between the trailer and the curb and, as the right lane began to narrow, the bicyclist lost control of the bike and fell into the back right side of the trailer. The accident happened approximately forty feet west of Downing. Appellant had the right of way at the time of the accident as he had entered the lane ahead of the bicycle. The bicyclist, not Appellant, was at fault for causing the accident by trying to pass on the right without sufficient room.

III. FINDINGS

The Agency argues that the Hearing Officer erroneously interpreted carelessness under CSR 16-60 B. to mean that an employee failed to exercise ordinary care, when she should have interpreted it to mean that the employee was heedless or unmindful of an important work duty. The Board finds, however, that this appeal does not turn on the interpretation of the word carelessness, but on the factual findings of the Hearing Officer. And, because the Agency does not challenge the sufficiency of the evidence, the Hearing Officer's findings of fact are binding on the Board.

The Agency believes that Appellant was careless by not taking extra precautions which were necessary because Appellant did not know what the bicyclist would do when the bus lane ended. Specifically, the Agency suggests, as it did before the Hearing Officer, that Appellant should have stayed behind the bicycle until its direction of travel was clear, or passed the bicycle in the left lane. But the Hearing Officer analyzed both of these suggested actions and found that neither would have prevented the accident, which was caused by the bicyclist's subsequent illegal actions in trying to overtake Appellant's vehicle on the right. At the hearing, the Agency did not establish that Appellant failed to exercise ordinary care, or that he acted heedless or unmindful of an important work duty.

Similarly, the Agency argues that the Hearing Officer erroneously interpreted CSR 16-60 K. (failure to meet established standards of performance) by failing to address Appellant's PEP standard of "no preventable vehicle accidents or injuries." In support of this argument the Agency contends that Appellant "caused a preventable vehicle accident with injuries and he failed to adhere to the rules of the road." Opening Brief, p. 10. Once again, however, the Agency' disagreement is not with the interpretation of the rule, but with the Hearing Officer's factual findings, a disagreement the Agency has waived in this appeal. The Hearing Officer found that Appellant did not violate any traffic laws or rules

of the road, and further found that none of Appellant's actions, or suggested actions by the Agency, would have prevented the accident, which was caused by the bicyclist, not Appellant. Based on these factual findings, the Agency did not establish that Appellant failed to meet his PEP standard of no preventable accidents or injuries.

IV. ORDER

IT IS THEREFORE ORDERED that the Agency's Petition for Review is **DENIED** and the Hearing Officer's Decision, dated February 6, 2008, is **AFFIRMED**.

SO ORDERED by the Board on August 7, 2008, and documented this
21st day of August, 2008.

BY THE BOARD:



Luis Toro, Co-Chair

Board Members Concurring:
Tom Bonner
Nita Henry
Kit Williams
Felicity O'Herron