

DECISION AFFIRMING FOUR-DAY SUSPENSION

IN THE MATTER OF THE APPEAL OF:

MELISSA SIGALA, Appellant,

vs.

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

I. INTRODUCTION

The Appellant, Deputy Melissa Sigala, appeals her four-day suspension¹, assessed by the Denver Sheriff's Department (Agency) on September 4, 2012, for alleged violations of specified Career Service Rules. By stipulation, no evidentiary hearing was held. Instead, the parties submitted briefs and stipulated to those facts as stated in the Agency's notice of discipline. Bruce A. Plotkin, Hearing Officer, rendered this Decision. The Agency was represented by Franklin A. Nachman, Assistant City Attorney. The Agency was represented by Eric James, Esq., of the firm Elkus, Sisson & Rosenstein PC. Agency exhibits 1-12 were admitted. Appellant offered no additional exhibits.

II. ISSUES

The only issue to be decided is whether the four-day suspension selected by the Agency was clearly excessive under CSR 16-20.

III. FINDINGS

The parties stipulated to the following facts which are deemed to be established.

The Appellant, Melissa Sigala, is a deputy sheriff, employed by the Agency.

On March 1, 2011, Sigala was off-duty and driving her personal vehicle, when she made a left turn in front of an oncoming motorcycle.

¹ Appellant also received a written reprimand in the same incident; however Appellant acknowledged that matter was not appealable under the Career Service Rules, and did not contest that discipline in this appeal. [Pre-hearing conference, 12/11/12]. Accordingly, the Agency withdrew its claim under CSR 15-15 A.2, (failure to report traffic citation), and withdrew its claim under CSR 16-60 Y (conduct which violates the Career Service rules or other legal authority). [12/11/12 pre-hearing conference].

The motorcycle skidded and flipped, throwing the helmetless rider.

The Motorcyclist suffered fatal head injuries as a result of the accident.

In addition to those facts established by stipulation, the following findings enter based on the parties' stipulated submissions. As part of her plea agreement, Sigala pled guilty to "careless driving resulting in death," CRS 42-4-1402(2), a class 1 misdemeanor traffic offense, punishable by up to one year in jail and a fine of up to \$1,000. [Exhibit 9]. As a further condition of her plea agreement, Sigala admitted the accident occurred as alleged in the charging complaint. [Exhibit 3-2]. If Sigala completes the terms of her 24-month deferred judgment and sentence, she will be allowed to withdraw her guilty plea and the case will be dismissed. [Exhibit 9-1, 9-2]. By pleading guilty to the violation cited above, and admitting the facts as alleged by the complaint in her court case, Sigala admitted she violated the following Career Service Rules.

1. CSR 16-60 L., Failure to observe written departmental or agency regulations, policies or rules. When citing this subsection, a department or agency must cite the specific regulation, policy or rule the employee has violated.

[Departmental Order #300.11.1 Conduct Prohibited by law

Deputy Sheriffs and employees shall not violate...any... state or federal statutes.

2. CSR 16-60 Z. Conduct prejudicial to the good order and effectiveness of the department or agency, or conduct that brings disrepute on or compromises the integrity of the City.

IV. ANALYSIS

A. Introduction.

In assessing the merits of a disciplinary appeal, hearing officers conduct a two-part review, applying a different standard of review to each part. First, the hearing officer determines whether the Agency proved, by a preponderance of the evidence, that the appellant violated one or more Career Service Rules. If the agency proved the appellant violated any of the alleged violations, then, for the second part of the review, the hearing officer uses a more deferential standard: whether the level of discipline chosen by the agency was clearly excessive. City of Denver v. Weeks, 10CA1408 (Colo. App. 2011).

Since the parties agreed Appellant violated CSR 16-60 L., via D.O 300.11.1 and also violated CSR 16-60 Z., the only question to resolve is whether the Agency's election of a four-day suspension was clearly excessive under the parameters set forth in CSR 16-20. This is a somewhat different issue from that framed by the parties: whether the decision maker, Deputy Manager Ashley Kilroy, properly applied the Agency's matrix to the facts of the case. [Appellant Response Brief, pp 2-4, Agency's Brief p.4; Agency's Reply Brief]. That inquiry is only tangentially related to

the primary inquiry. In the appeal of a Sheriff's Department matrix discipline, as long as the Agency selects a level of discipline which complies with the directives of CSR 16-20, then the hearing officer may not interfere with the agency's decision, [see Weeks, supra], even if it's selection is internally inconsistent with the matrix. Said another way, the Career Service Rules establish the parameters for the propriety of agency discipline, not the other way around. The tail does not wag the dog. For that reason, the analysis of the Agency's discipline proceeds according to the directives within CSR 16-20.² That rule plainly states the goal of discipline.

The purpose of discipline is to correct inappropriate behavior or performance, if possible. The type and severity of the 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 consideration 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, in a disciplinary case, after an agency determines an employee violated a Career Service Rule, the agency is free to decide on a method for assessing an appropriate level of discipline; but the Agency's decision, however selected, must satisfy three questions: was the level of discipline reasonably related to the seriousness of the offense? did the decision maker consider the employee's past record? and was the level of discipline designed to correct the wrongdoing or poor performance?

B. Severity of the proven offenses.

Sigala admitted she violated CSR 16-60 L., via D.O. 300.11.1. The law underlying Sigala's admission was CRS 42-4-1402(2), careless driving resulting in death, a class 1 misdemeanor traffic offense, punishable by up to one year in jail and a fine of up to \$1,000. [Exhibit 9]. There should be no doubt the violation is severe. The state statute distinguishes this more severe form of careless driving from simple negligence by its enactment as a separate offense from simple careless driving, [compare CRS 42-4-1402(1)], which carries a lesser penalty range of 10-90 days jail plus a fine of \$150-\$300. Appellant's focus on distinguishing traffic misdemeanors from criminal misdemeanors, [Appellant attorney statement 12/11/12 pre-hearing conference], does not lessen the severity of the violation.

Sigala also admitted she violated CSR 16-60 Z. However, it is unclear what facts established a violation under this rule, since it was not apparent what actual harm the Agency or City suffered, and the parties stipulations did not address such harm. Thus, this violation is not an aggravating factor.

² Notably, the purpose statement of the matrix reads: "This Handbook is not intended to establish any appellate or other legal rights not granted by the Career Service Authority." [Agency Reply Brief, Attachment 1-1].

C. Past discipline.

Kilroy did not consider Sigala's past record as an aggravating factor in this case. [pre-hearing conference 12/11/12]. There was no evidence in the record to suggest a history of any similar conduct.

D. Penalty most likely to achieve compliance with the Career Service Rules.

Neither party addressed this factor. There was no reason in the record to suggest Sigala would not be able to correct the wrongful behavior and comply with the Career Service Rules she admitted violating.

In light of the severity of the admitted violations, Sigala's past record, and in the absence of reason to doubt future compliance with the Career Service Rules, the degree of discipline assessed by Kilroy was reasonably related to the factors considered in CSR 16-20. Further, Kilroy's selection of the level of discipline was not clearly excessive.

V. SIGALA'S MATRIX ARGUMENT

The parties disagreed over Kilroy's application of the matrix in assessing discipline. Sigala claimed the category of discipline must be selected according to guidelines set forth in section 15 of the matrix, [Appellant's Response Brief], and that Kilroy failed to do so. Her other contention was that Kilroy failed to consider the factors set forth in CSR 16-61 B. as a prerequisite to determining whether Sigala's conduct violated CSR 16-60 L. [Id.]. The key evidence concerning Sigala's claims was the stipulated affidavit of Deputy Manager of Safety Kilroy. Even if the principal issue in this appeal had been Kilroy's application of the Agency's matrix, her application of the matrix was reasonable and not clearly excessive.

First, the Agency's matrix applies to all violations occurring on or after January 1, 2011. [Agency Reply Brief, Attachment 1-1]. Thus, the matrix applies to this case.

Next, the matrix requires the decision maker to consider the following factors in conjunction with other Agency rules and the Career Service Rules, when deciding which category best fits the particular misconduct. [Agency Reply Brief Attachment 1-1, emphasis added]. The matrix sets forth the following paraphrased considerations.

1. Nature of the misconduct.
2. How the misconduct relates to the Agency mission and guiding principles.
3. How the misconduct impacted the operations and image of the Agency and its relationship with the community.
4. The actual harm or risk of harm.
5. Whether the misconduct involved an actual impact to a deputy, employee, to public safety, or a demonstrable risk to a deputy, employee or public safety.

6. Whether the violation resulted in actual injury to a deputy, employee, or member of the public, and the extent thereof.
7. Whether the misconduct involved unethical behavior or a serious abuse or misuse of authority.
8. Whether the misconduct foreseeably resulted in death or serious bodily injury.
9. Whether the misconduct constituted a failure to adhere to any condition of employment required by contract or mandated by law.
10. Whether any rule or regulation has a conduct category which addresses similar misconduct
11. Previous, similar cases under the matrix.

Sigala contended Kilroy failed to name the above factors in deciding the appropriate category of discipline. While naming each factor and describing the analysis thereof might avoid the necessity of justifying a matrix-based decision on appeal, the purpose statement preceding the matrix does not require Prussian rigidity in applying the considerations stated above. Rather they are factors to be considered along with other Agency rules, regulations, and, of paramount importance, the Career Service Rules. Kilroy made the following observations about Sigala's conduct which relate to those factors listed above.

1. General nature of the conduct. Kilroy specified she considered Sigala engaged in conduct prohibited by law, pursuant to CSR 16-60 L, DO 300.11.1 and the state statute of careless driving resulting in death. These considerations satisfy the general nature of the conduct.

2. How the conduct relates to the Agency mission and principles. Kilroy specified "Sheriff personnel are employed to enforce custodial rules, laws and to protect constitutional rights." She stated Sigala's violation of law, even if negligent rather than intentional, "is totally antithetical to a deputy's role in society. Kilroy's statements reflect the Agency's mission and principles, and she connected Sigala's wrongdoing to them.

3. How Sigala's actions impacted the Agency's operation and image. The closest Kilroy came to relating Sigala's actions to this factor was her statement that "there is evidence that the police and courts were aware of Appellant's employment." Kilroy's statement did not substantially relate Sigala's actions to this matrix factor, just as it failed to specify how Sigala's actions violated CSR 16-60 Z., conduct prejudicial.

4. Actual harm or risk of harm. Kilroy amply identified the harm caused by Sigala, including the death of the motorcyclist killed as a result of Sigala's actions, and the grief to the family of the motorcyclist.

5. Impact to...public safety. Kilroy identified the death of the motorcyclist killed as a result of Sigala's careless driving as a significant impact to public safety.

6. Actual injury. The same comment, immediately above, also applies here.

7. Unethical behavior or abuse of authority. Kilroy mentioned police and the courts were aware of Sigala's employment as a deputy sheriff, but did not claim such awareness came from Sigala, or that such awareness derived from any unethical conduct or abuse of authority by Sigala.

8. Sigala's misconduct foreseeably resulted in death or substantial injury. Kilroy directly addressed this factor. She stated: "[i]n driving carelessly, Appellant ignored the obvious risk that she might harm others and, in fact, she caused the violent and grim death of Mr. Russo."

9. Failure to adhere to any condition of employment required by contract or mandated by law. Kilroy's reference to Sigala's violation of state law by pleading guilty to careless driving resulting in death satisfies this factor.

10. Similar misconduct addressed by other rules. Kilroy's affidavit extensively discussed those department orders, Career Service Rules, and state statutes which Sigala violated. She determined Sigala's violation of those various authorities were the basis for deciding on the category of discipline in the Agency's matrix. Kilroy amply considered this factor.

11. Similar prior cases under the matrix. Kilroy did not address this factor.

Kilroy did not name each factor and the facts which connect Sigala's actions to those factors. As stated in previous decisions, an agency's failure to connect the dots may make its task more difficult than it needs to be. However, it is apparent in the present case, which contains limited and undisputed facts, that Kilroy analyzed Sigala's actions in light of every significant factor in section 15 of the matrix. The factors which Kilroy did not consider are inconsequential. For example, it is possible there has been no prior case with sufficient similarity to this case, such that Kilroy could or should have considered its relationship to the present case.

Sigala also contended Kilroy failed to address those factors contained in CSR 16-61 B., before determining Sigala violated CSR 16-60 L. First, Sigala's admission that she violated CSR 16-60 L. renders that argument moot. Second, the process required by CSR 16-61³ pertains to CSR 16-60 P.⁴, not 16-60 L. For these, and other reasons stated above, Sigala's matrix claims fail.

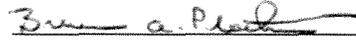
³ "Contemplating or Imposing discipline on an Employee Convicted of or Charged with a Crime"

⁴ "Conviction of or being charged with a crime. Prior to imposing discipline under this subsection, the department or agency shall follow the guidelines contained in subsection 16-61."

VI. ORDER

The Agency's assessment of a four-day suspension of Appellant's employment on September 4, 2012, is AFFIRMED.

DONE February 12, 2013.



Bruce A. Plotkin
Career Service 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. The Career Service Rules are available as a link at www.denvergov.org/csa.

All petitions for review must be filed with the:

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

AND

Career Service Hearing Office
201 W. Colfax, 1st Floor
Denver, CO 80202
FAX: 720-913-5995
EMAIL: CSAHearings@denvergov.org.

AND

Opposing parties or their representatives, if any.