

**CAREER SERVICE BOARD,  
CITY AND COUNTY OF DENVER, COLORADO**  
Appeal No. 71-16A

---

In the Matter of the Appeal of:

**JEREMY SIMONS,**

Petitioner-Appellant,

v.

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

Respondent-Agency.

---

**DECISION AND ORDER**

---

The Denver Sheriff Department and the Department of Safety (Agency) determined that Deputy Jeremy Simons (Appellant) had made discriminatory, intimidating and harassing comments to inmates. Specifically, the Agency believed that Appellant had called inmates (including Black and Hispanic inmates) monkeys, referred to various inmates as snitches<sup>1</sup> (a highly pejorative and potentially dangerous reference in the jail)<sup>2</sup>, and would consistently talk to inmates about how they could be or could have been shot and killed. The Agency believed that these comments violated internal rules prohibiting discrimination and harassment based on race (RR-400.2), harassment generally (RR-400.5)<sup>3</sup> and Career Service Rule 16-60A, Neglect of Duty.<sup>4</sup> The Agency further believed this inappropriate behavior warranted Appellant's discharge from the Agency.

Appellant appealed his discharge to a Hearing Officer. The Hearing Officer, after hearing testimony, including testimony from inmates, upheld the Agency's discharge of Appellant based primarily on the fact that he found the inmates' testimony concerning Appellant's improper conduct more credible than Appellant's denials.

---

<sup>1</sup> Appellant admits, at page 13 of his brief, that it is "incredibly dangerous" to label an inmate a snitch.

<sup>2</sup> Some of these "snitch" comments were made in conjunction with prisoners filing grievances, something which they had the absolute right to do.

<sup>3</sup> RR-400.5 prohibits deputies from taunting or harassing prisoners, and further prohibits from maliciously embarrassing intimidating or threatening any person.

<sup>4</sup> This Rule has since been re-numbered and combined with former Rule 16-60B and is currently encompassed in Career Service Rule 16-29A.

Appellant has appealed the Hearing Officer's decision to the Board. The Board AFFIRMS the Hearing Officer.

Appellant argues generally that the Hearing Officer misinterpreted the Career Service Rules and the Agency Regulations, and further, that there was insufficient evidence in the record to support the Hearing Officer's conclusions. We disagree on all counts.

Agency Rule and Regulation (RR) RR-400.2 prohibits Agency employees from engaging in any form of discrimination or harassment against prisoners due to race, color, or other protected status. We agree with the Hearing Officer's tacit interpretation of this regulation; that is, if Appellant referred to inmates as "monkeys," he has discriminated against or harassed those inmates and has, consequently, violated this regulation. The Hearing Officer, after hearing the testimony of the inmates, determined that Appellant, had in fact, referred to some inmates as "monkeys." This inmate testimony constitutes sufficient evidence in the record to support the Hearing Officer's findings and conclusions.

Appellant's specific argument for overturning the Hearing Officer's findings regarding the violation of RR-400.2 is that the testimony of one prisoner who testified that Appellant referred to inmates as "monkeys" (inmate SK) is not credible. But it is well established that the determination of the credibility of witnesses is within the discretion of the Hearing Officer. This Board does not re-weigh witness credibility. Given this record, we cannot say that SK's credibility was so impugned or impeached so as to make the Hearing Officer's determination of that credibility an abuse of discretion.

In any event, Appellant acknowledges (at page 9 of his brief) that three other inmates (inmates KH, JB, and MG) also testified that Appellant had referred to inmates as "monkeys." The Hearing Officer also found these inmates to be credible witnesses. And the only thing Appellant does in his brief, in an attempt to impugn their credibility, is to suggest that there might have been collusion among the prisoners.<sup>5</sup> But the evidence in this record falls woefully short of proving that the inmates colluded in their testimony. And even if the record were to support some inference of some sort of mutual discussion or cooperation among the inmates, there is simply no evidence in the record that said cooperation resulted in false testimony. There is nothing in this record which persuades us, let alone compels us, to reverse the Hearing Officer's factual findings or conclusions. We believe this record more than adequately supports

---

<sup>5</sup> At the bottom of page 11 of Appellant's brief, Appellant complains of the possibility that the Hearing Officer failed to review the deposition of inmate RB because that deposition was not mentioned in the Hearing Officer's decision. We have the utmost confidence that the Hearing Officer reviewed all of the evidence and rendered a decision based on all of the evidence in the record. We do not expect a Hearing Officer, in a decision, to reference every bit of testimony, and every exhibit admitted into evidence, and explain, why each piece of evidence or testimony was important or not important and then give an explanation as to why the Hearing Officer treated the testimony or exhibit in the manner it was treated. It is sufficient for our purposes that the Hearing Officer's decision is supported by record evidence and that said decision offers sufficient justification to the parties and this Board why the Hearing Officer ruled the way he or she did. We believe that this Hearing Officer's decision is sufficiently clear in explaining what the Hearing Officer decided and why he decided he way he did.

the Hearing Officer's findings that Appellant did, on more than one occasion, refer to inmates as monkeys. And we further believe that if this matter were to stop right here, there would be sufficient evidence in the record to support the Agency's action of terminating the Appellant.

As Appellant acknowledges, his argument for overturning the Hearing Officer's decision concerning the RR-400.5 violation is basically the same as his argument for overturning the decision concerning the RR-400.2 violation – sufficiency of evidence and credibility. Not surprisingly then, this argument meets the same fate as the previous argument.

We reject the credibility argument because, once again, we will not re-weigh the credibility of witnesses. The Hearing Officer found the testimony offered by the inmates more credible than the testimony offered by Appellant. The Hearing Officer was well within his rights to do this.

In addition, the testimony relied on by the Hearing Officer is sufficient record evidence to support the conclusion that Appellant harassed and intimidated prisoners by talking to them about being shot and killed and to referring to them as snitches. Appellant urges us to overturn the Hearing Officer's findings because, he claims, the Hearing Officer "cherry picked"<sup>6</sup> his evidence. That is, Appellant claims there was evidence, which the Hearing Officer ignored, which could support his claim that he did not make the offending comments. What the Appellant refers to as cherry picking, however, appears to us to be nothing more than resolving conflicts in evidence. This is what a hearing officer does. The inmates say Appellant talked about shoot to kill and called them snitches, while Appellant denies he did that. There is a conflict in the evidence which the hearing Officer, to decide the appeal, must resolve. The Hearing Officer found the inmates more credible than Appellant and, as a result, resolved the evidence conflict in favor of the Agency. Appellant's claim that the Hearing Officer cherry picked evidence is a tacit admission that his findings are supported by record evidence. Those factual findings, therefore, cannot be overturned.

Appellant's summary of his argument (at page 14 of his brief) boils down to a claim that, taking the record as a whole, the Hearing Officer came to the wrong conclusion. For us to overturn the Hearing Officer based on this ground would require us to re-weigh not just the credibility of every single witness, but to re-weigh the weight given to every word of testimony and every admitted exhibit. Needless to say, this Board does not engage in any such re-weighing of credibility or weight to be given evidence.<sup>7</sup>

Appellant also claims that the Hearing Office erred in finding that he violated Career Service Rule 16-60A, Neglect of Duty. The Agency claimed that Appellant had a duty to

---

<sup>6</sup> Appellant's brief, p. 12, middle paragraph.

<sup>7</sup> To the extent that Appellant might have obliquely-raised the issue, we concur with the Hearing Officer's interpretation of RR-400.5. We agree that Appellant, in calling prisoners snitches and talking to them about shooting and killing them is both taunting and harassment, as well as threatening and intimidating; all of which are prohibited by RR-400.5.

conform his actions to the guiding principles of the Agency, which included fairness, judgment, accountability, integrity, professionalism and respect for inmates. The Agency determined that Appellant's actions in calling inmates monkeys, referring to them as snitches, and talking to them about shooting and killing them, violated these guiding principles, and, therefore, violated CSR 16-60A. The Hearing Officer agreed.

Appellant first argues that the Hearing Officer erred because Appellant, during the two years he was employed, had a good record. Appellant's past record, however, is immaterial in determining whether Appellant committed the alleged acts of misconduct.

Appellant next claims the Hearing Officer erred because there was a discrepancy in one of the inmate's testimony. As we have already noted, however, despite this alleged discrepancy, the Hearing Officer found the witness to be credible; and there were other witnesses, not just the one, whose testimony contributed to the Hearing Officer's conclusion that Appellant's conduct violated CRS 16-60A. Appellant has offered us no valid reason for overturning the Hearing Officer's findings and conclusions regarding CSR 16-60.

Finally, Appellant argues that the Hearing Officer erred in upholding the penalty of termination. We disagree. As Appellant noted, a Matrix Category F violation (which this was deemed to be) carries with it the presumptive penalty of discharge. We believe the record justifies a Matrix Category F penalty. We are convinced that Appellant's misconduct was willful. He did not accidentally call inmates monkeys. He did not simply "let slip" his references to people who file grievances as snitches. He did not absent-mindedly talk to inmates about shooting and killing them.

Regardless, as the Hearing Officer correctly noted, his determination concerning the appropriateness of the penalty imposed revolves around whether it was within the range of alternatives available to a reasonable manager. We find Appellant's conduct disgusting and inimical to everything the City stands for. Appellant has proven that he does not have the fitness or character to work for the City and County of Denver.

The Hearing Officer's decision is AFFIRMED.

SO ORDERED by the Board on November 2, 2017, and documented this 18th day of January, 2018.

BY THE BOARD:

  
\_\_\_\_\_  
Co-Chair

Board Members Concurring:

Neil Peck

Karen DuWaldt

Patricia Barela Rivera

Tracy Winchester