

**CAREER SERVICE BOARD, CITY AND COUNTY OF DENVER,
STATE OF COLORADO**
Appeal No. 30-15A

DECISION AND ORDER

IN THE MATTER OF THE APPEAL OF:

DANIAL STECKMAN,
Petitioner-Appellant,

vs.

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

The hazing of prisoners by other prisoners in Denver jails is strictly prohibited. The Denver Sheriff Department (Agency) has a zero-tolerance policy against hazing. Hazing includes prisoners patting down, or conducting pat searches of other prisoners. If a deputy encounters such hazing, he or she is required to stop it and report it.

On May 7, 2014, Deputy Danial Steckman (Appellant) was assigned to relieve the regular housing officer in inmate residential pod 4E of the Downtown Detention Center for a forty-five- minute period. Appellant assumed his duties taking a seat behind an officer's desk. A laundry exchange for the prisoners was scheduled during this relief stint and occurred over an eleven-minute period. During seven of those eleven minutes, a video captured two tier porters (prisoners who had been afforded certain privileges) patting down other prisoners. One of those prisoners who was subjected to a pat down actually fell on Appellant's desk on the other side of his computer monitor. During the entire period that the pat downs were being conducted, Appellant did nothing to stop the pat downs and barely lifted his eyes from his computer monitor. Appellant never reported any of the hazing.

A prisoner who had been subjected to a pat down complained. This resulted in the Agency conducting an investigation of the incident and, necessarily, of Appellant's conduct during the incident. When the Agency determined that numerous incidents of hazing occurred right in front of Appellant; that Appellant did nothing to report or stop the hazing; and that Appellant was being untruthful in his claims that he saw nothing, the Agency brought discipline against him, resulting in Appellant's discharge.

Appellant appealed his discharge to a hearing officer. The Hearing Officer determined that Appellant had admitted that he witnessed two or three incidents of hazing and that the

Agency proved that it was more likely than not that Appellant actually witnessed two incidents of hazing. The Hearing Officer further determined that Appellant did nothing to report or stop the hazing; rejected Appellant's claim that what he did witness was just "horseplay"¹ and not hazing, and further found Appellant's credibility lacking. The Hearing Officer upheld Appellant's termination.

Appellant appeals the Hearing Officer's decision. We AFFIRM the Hearing Officer.

Appellant first argues that the Hearing Officer's decision is not supported by sufficient record evidence in that the Agency used evidence against him that had nothing to do with the incident for which Appellant was dismissed. There is a kernel of truth to this allegation, though that kernel does not justify overturning the Hearing Officer's decision.

The record indicates that when considering the discipline to be imposed against Appellant, it considered a complaint made by an inmate as probative of the level of harm incurred by inmates as a result of hazing incidents. As it turned out, that complaint was made against a different deputy and not against the Appellant. The Agency's mistake was revealed at hearing. The Hearing Officer properly disregarded the prisoner complaint and the complaint did not factor into any part of the decision rendered by the Hearing Officer.

The Hearing Officer, of course, conducted a *de novo* hearing. Because the hearing was *de novo*, the Agency's beliefs held and actions taken prior to the hearing were not and would not be dispositive of any issue to be resolved at hearing. The Hearing Officer would base his decision only on the testimony adduced at hearing and the evidence admitted into the record. In this case, The Hearing Officer determined, without consideration of the misattributed prisoner complaint, that the Agency had proven rules violations and had justified the penalty of termination. We believe the record in all respects supports the Hearing Officer's determinations.

The absolute prohibition against hazing, and the absolute requirement that deputies report and stop hazing are not dependent upon a showing of harm against any particular prisoner. The prisoner complaint was considered (wrongly, against Appellant) only for a showing of harm. The Hearing Officer correctly determined that the record sufficiently justified the penalty of discharge, even without the presence of the prisoner's complaint. As such, while the Agency was incorrect in believing that Appellant had subjected this particular complaining prisoner to harm, that incorrect belief did not taint the evidence which the Hearing Officer found justified the penalty of discharge.

Appellant next argues that the Hearing Officer erred in finding that his actions violated Career Service Rule 16-60(A) (Neglect of Duty) in that there was insufficient evidence to support the finding. Here, Appellant advances the specious argument that Appellant was disciplined because he did not know what every inmate in the pod was doing at all times. But the Agency did not punish Appellant for his failure to be "omniscient" as asserted by Appellant in his brief, and the Hearing Officer imposed no such requirement or expectation on Appellant. Rather, the Hearing Officer found (and the video of the incident confirmed) tier porters were

¹ The Hearing Officer, at page 5 of his decision, determined that what Appellant described as "horseplay" described "the same behavior that constitutes wrongful hazing-by-pat-search."

patting down, searching, or otherwise impeding the movement of other prisoners, and that Appellant, in response, barely looked up from his computer monitor and “never reacted to the evident hazing going on directly in front of and to the side of him.”² This conclusion is supported by record evidence, specifically, the video of the laundry exchange during which the hazing took place.³

Appellant asserts that the record lacks sufficient evidence to support the Hearing Officer’s conclusion that Appellant violated CSR 16-60(E) which prohibits engaging in acts of dishonesty. The Hearing Officer sustained this charge finding that it was not reasonable that Appellant could not remember an inmate being patted down and collapsing directly in front of him after having his legs kicked apart as part of a pat down; after having admitted to seeing two or three incidents of hazing. The Hearing Officer’s conclusion is reasonable based on the video and Appellant’s own statements.

Appellant next argues that the Hearing Officer erred in concluding that Appellant failed to respond to the pat searches he observed. Our review of the evidence leads us to conclude that the Hearing Officer’s finding on this issue was correct. Even if Appellant did, on occasion, tell some inmates to stop their misbehavior,⁴ the video shows that he did it with such minimal movement so as to make those attempts virtually imperceptible and that whatever efforts he made were so ineffective that they had no impact on the tier porters’ willingness or ability to continue with their hazing.

Appellant also takes issue with the Hearing Officer’s finding that an inmate was injured during the pat downs. First, we note that a determination of this issue is immaterial to the appeal. The sustained findings against Appellant justifying his discharge were sustained regardless of any consideration of inmate injury. Nevertheless, the Hearing Officer’s conclusion, based on his review of the video, that the inmate who collapsed in front of Appellant suffered an injury to his leg is reasonable and not clearly erroneous based on the video.⁵

Appellant also claims that the Hearing Officer’s decision carries negative policy implications because it imposes an impossible standard on deputies in the performance of their duties. We reject this.

² Hearing Officer decision, top of page 4.

³ Appellant suggests a curious argument at page 11 of his brief. In response to the Hearing Officer’s conclusion that he barely looked up from his computer screen, he argues that the video did not actually show his eyes, evidently implying that he could have been paying attention, and that he could have been taking in the event of the room, even though the positioning of his head did not necessarily reflect that he was doing so. If this the case, however, and Appellant witnessed much more than he appeared to on the video, it makes his failure to acknowledge and stop all the hazing that was occurring even more indefensible.

⁴ The Agency claimed that part of the evidence proving that Appellant engaged in acts of dishonesty was his claim that he told the tier porters to stop their misbehavior. The Hearing Officer held that the evidence was inconclusive and that the Agency had failed to prove by a preponderance of the evidence that Appellant’s claim was a lie. The Hearing Officer did not find, however, that Appellant actually told the tier porters to cease their improper activities; he simply found that there was no more evidence supporting the Agency’s claim that Appellant did not issue his warnings, than there was supporting Appellant’s claim that he did issue warnings to the tier porters.

⁵ We need not accept Appellant’s supposition (at page 15 of his brief) that the inmate’s limp was a feigned injury in furtherance of some joke. Nor do we believe the inmate was required to report his injury for the Hearing Officer to justify his finding.

The Hearing Officer's decision does not impose any impossible, or even unreasonable burden or standard on any deputy. The Hearing Officer's decision, if it imposes any burden on deputies at all, imposes the not terribly onerous burden of requiring deputies to look up from their computer monitors every once in a while, especially while inmates are engaging in inappropriate behavior; and then doing something about that inappropriate behavior. We hardly believe this is too much to ask or expect of a deputy. This is especially true in light of the unambiguous and important policy prohibiting hazing. We see no negative policy implications in the Hearing Officer's decision.

Appellant also argues that the Hearing Officer's decision must be overturned because the Agency's Civilian Review Administrator lacked the authority to issue the discipline imposed in this case. We believe the CRA was and is authorized to issue discipline to employees of the Denver Sheriff Department. *In re Gale*, No. 02-15A.

Finally, Appellant claims there was insufficient evidence to support a finding that Appellant had an intent to deceive when he was found guilty of making false statements. As we noted in *Gale, supra*, intent, especially intent to deceive, can be inferred from circumstances. We believe the record provides sufficient evidence to support the Hearing Officer's inference that Appellant intended to deceive when he uttered his false statement.

For all of the above reasons, the Hearing Officer's decision is AFFIRMED.

SO ORDERED by the Board on October 20, 2016, and documented this 19th day of January, 2017.

BY THE BOARD:


A handwritten signature in blue ink, appearing to be 'J. L. ...', is written over a horizontal line.

Co-Chair

Board Members Concurring:

Patti Klinge

Neil Peck

Derrick Fuller