

DECISION AFFIRMING FIVE-DAY SUSPENSION

DANIEL WILLIAMS, Appellant,

v.

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

I. INTRODUCTION

The Appellant, Daniel Williams, appeals his five-day suspension from the Denver Sheriff's Department (Agency), assessed on August 1, 2016, for alleged violations of specified Career Service Rules and an Agency regulation. A hearing concerning this appeal was conducted by Bruce A. Plotkin, Hearing Officer, on November 1, 2016. The Agency was represented by Assistant City Attorney Richard Stubbs, while the Appellant was represented by Doug Jewell, Esq. Agency's exhibits 1-9, 10.3, 11-13, 15-18, 21-23, 25, and 30 were admitted. Appellant's exhibits A, C, E, G, H, L, T, V, W, CC, GG1 - GG3, HH, and II were admitted. Civilian Review Administrator Shannon Elwell testified for the Agency. The Appellant testified on his own behalf, and also presented Deputies Brian Jardis, Gregory Shimek, and Sergeant Jeff Smith.

II. ISSUES

The following issues were presented for appeal:

- A. whether the Appellant violated any of the following Career Service Rules: 16-60 B; or 16-60 L;¹
- B. if the Appellant violated one or more of the aforementioned Career Service Rules, whether the Agency's decision to suspend him for 5 days conformed to the purposes of discipline under CSR 16-20.

III. FINDINGS

The Appellant, Daniel Williams, has been a deputy sheriff for approximately five years. At the time of the incident leading to this appeal, he was assigned to the Records Unit. His duties included accurately recording court-ordered sentences into the jail's computer.

On Friday, February 6, 2015, Williams accidentally recorded inmate PL's sentence of 60 days as "flat time" instead of "regular time." The difference is an inmate on "flat time" is not entitled to reduction in court-ordered jail time for statutory credit for time served, Agency-assessed credits for good behavior, and other Agency-credited time such as for completing specified classes. PL earned credited time during his sentence which should have resulted in his release on March 14, 2015. [Exhibit 15-5]. Instead, he was released on April 1st, 18 days later. [Exhibit 3-86].

¹ Since this appeal was filed, the Career Service Rules have been revised. Because the previous version of the rules was in effect when discipline was assessed, the earlier version applies here.

On February 9, 2015, Deputy Jardis converted inmate PL's sentence from "short-term" to "long-term," as required for any inmate sentence exceeding one week. [Jardis testimony]. During the conversion, Deputy Jardis audited PL's file, comparing it against the jail's computer and the audit checklist, but did not catch Appellant's mistake. [Exh. Z-8]. Another audit on February 28, 2015, by Deputy Shimek, also failed to catch Williams' mistake. [Id]. A third audit of PL's file on April 1 discovered Williams's error and PL was released that day. Chief Brown, Major Oliva, Captain Brown, and Sergeant Shelton became aware of the error the following day, April 2, 2015, and ordered an investigation by the Internal Affairs Division. [Exh. E].

Following the investigation, the Agency held a contemplation of discipline meeting on July 13, 2016. [Exh. 30]. Williams attended with his attorney and admitted he made a mistake in entering PL's sentence as flat time. [Id at 30-10]. He asserted that, if any of the audits conducted before March 14 had caught his mistake, as they should have, PL would have been released on time.

The Agency suspended Williams for five days August 1, 2016. This appeal followed in timely fashion on August 9, 2016.

IV. ANALYSIS

A. Jurisdiction and Review

Jurisdiction is proper as the direct appeal of a suspension. CSR §19-20. I am required to conduct a *de novo* review, meaning to consider all the evidence as though no previous action had been taken. Turner v. Rossmiller, 532 P.2d 751 (Colo. App. 1975).

B. Burden and Standard of Proof

The Agency retains the burden of persuasion, throughout the case, to prove the Appellant violated one or more cited sections of the Career Service Rules, and to prove the degree of discipline complied with CSR 16-20. The standard by which the Agency must prove each violation is by a preponderance of the evidence.

C. Career Service Rule Violations

1. CSR 16-60 B. Carelessness in the Performance of Duties.

To sustain a violation under CSR 16-60 B., the Agency must establish Williams performed a known duty deficiently. In re Leslie, CSA 10-11 (12/5/11) *citing* In re O'Meallie, CSA 92-09, 4 (6/18/10).

At hearing, Elwell claimed Williams violated this rule when he carelessly entered inmate PL's jail sentence as "flat time" rather than "jail time." [Elwell testimony]. Williams admitted the mistake, but blamed the mistake largely on the lack of training in the Records division, being understaffed, and on others not catching the mistake in one of the required audits that were done by other deputies and sergeants. [Appellant testimony; *see also* Exh. 30].

Elwell acknowledged she did not penalize any other officer who reviewed PL's file for failing to catch Williams's mistake. She reasoned the other officers, unlike Williams as Records Officer, had no duty to re-calculate PL's out-date when they conducted audits or awarded

credit for time served or for attending complying classes.² This last point was critical to the Agency's case and was not rebutted by Williams. Williams argued there's no clear answer to what an audit should accomplish, but that uncertainty did not overcome Elwell's testimony. Moreover, Elwell declared even if an audit caught the error before PL's correct release date, she would have assessed the same penalty. She reasoned if the error had been caught, the case would not have been referred to IA and she would never have seen it.

There was no comprehensive training program in the Records Division and deputies rely primarily on on-the-job training and word of mouth. [Jardis testimony; Appellant testimony; Smith testimony; Shimek testimony]. In addition, although several audits were conducted prior to inmate PL's release date, and the purpose of audits is to "catch mistakes," none of the audits caught Appellant's mistake. [id.] Sergeant Smith and Deputies Jardis and Shimek agreed if they had seen Appellant's mistake they would have corrected it. [id.] The deputies who audited PL's file, and the sergeants who deducted earned time, but failed to recognize the error, were not disciplined. However, Appellant did not claim selective enforcement of a policy, and he did not claim discrimination. In the end, Williams was responsible for entering PL's out-date accurately, did not do so, and admitted the violation of this duty. Those facts establish a violation of CSR 16-60 B.

2. CSR 16-60 L. Failure to observe written departmental or agency regulations, policies or rules.

The Agency claimed the Appellant violated the following written policy.

Sheriff's Dept. Rules and Regulations

200.9 Full Attention to Duties

Deputy Sheriffs and employees shall devote their full attention to their duties in accordance with the policies and procedures of their post.

Violations of this DO have been sustained previously when deputies have fallen short of their duties. In re Mitchell, CSA 57-13, 5 (5/6/14); *see also* In re Norman-Curry, CSA 28-07 and 50-08, 5 (2/27/09). The same facts which established a violation of 16-60 B., above, also establish that Williams failed to pay full attention to his duties, to wit: Williams was aware of his duty to enter PL's sentence accurately. He mistakenly entered inaccurate information, resulting in the PL serving an excessive sentence. Those facts establish a violation under this rule.

V. DEGREE OF DISCIPLINE

The purpose of discipline under the Career Service Rules is to correct inappropriate behavior if possible. Appointing authorities are directed by CSR 16-20 to consider the severity of the offense(s), the employee's past record, and the penalty most likely to achieve compliance with the rules. CSR § 16-20. The measure of these considerations is whether the penalty assessed is within the range of penalties that could be imposed by a reasonable and prudent administrator, or is clearly excessive. In re Ford, 48-14A, 8 (CSB 9/17/15).

² which begs the question why the Agency would not require subsequent calculation of projected out-dates following events such as credit for time served, good time, or classes attended.

A. Seriousness of the proven offenses

In the universe of Denver Sheriff Department wrongdoing, this error was relatively minor. PL was released immediately upon discovery of the error; no law suit was threatened or filed, although it was certainly conceivable; and the error rate of wrongful discharge or retention remains low. See In re Espinoza, CSA 42-15, n. 3 (12/31/15). This same low error rate, however, also establishes that it is well-within the capacity of a deputy exercising his duty with reasonable care, to avoid causing inmates to serve excessive time. Elwell declared "[t]here can be no tolerance for any error when a citizen's liberty is at stake." [Exhibit 15-5].

Under the Agency's so-called disciplinary matrix, Elwell determined Williams's transgressions fell under category D, which defines such violations as "substantially contrary to the guiding principles of the department or that substantially interferes with its mission, operations or professional image, or that involves a demonstrable serious risk to Deputy Sheriff, employee or public safety." [Exh. 3-90]. The Agency deems category D violations are determined to merit a penalty of 4-16 days suspension. [Exhibit 3-86]. A mitigated penalty is determined to merit a 4-6 day suspension. [Id]. Elwell's assessment of a five-day suspension, therefore, was within the range of penalties that could be imposed by a reasonable and prudent administrator, and is not clearly excessive. In re Economakos, CSB 28-13A, 2 (3/27/14).

B. Prior Record

Elwell determined Williams had no prior discipline that counted against him. The Career Service Rules require discipline to be progressive, when possible. CSR 16-20; see also In re Ford, 48-14A, 8-9 (CSB 9/17/15). In addition to Williams's lack of prior discipline, Elwell assessed a mitigated penalty based on Williams taking responsibility for the error, expressing contrition, and not blaming others.

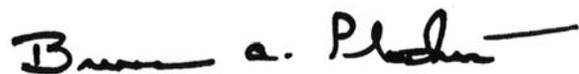
C. Likelihood of Reform

Williams acknowledged his mistake and stated his re-commitment to avoiding the same error. He has also transferred out of the Records division, eliminating the potential for the same error. No evidence contradicted this commitment to positive change, and accordingly a mitigated penalty was appropriate.

VI. ORDER

The Agency's 5-day suspension of Deputy Williams' employment, beginning August 1, 2016, is AFFIRMED.

DONE December 14, 2016.



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. See Career Service Rules 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
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Career Service Hearing Office

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AND opposing parties or their representatives, if any.