

CAREER SERVICE BOARD, CITY AND COUNTY OF DENVER, STATE OF COLORADO
Appeal No. 28-13A

DECISION AND ORDER

IN THE MATTER OF THE APPEAL OF:

STEVEN ECONOMAKOS,

Respondent,

vs.

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

Petitioner.

The Denver Sheriff's Department appeals the decision of the Hearing Officer which modified the disciplinary discharge of Steven Economakos to a thirty-day suspension. We reverse that decision and reinstate the discharge of Mr. Economakos.

The facts are not in dispute and are sufficiently discussed in the Hearing Officer's decision. It is enough for our purposes to note that the care and custody of inmates is of paramount importance for the Agency and it was Mr. Economakos' responsibility to supervise inmates. In dereliction of that responsibility, Mr. Economakos failed to secure a janitor's closet. As a result of this failure, a group of inmates were able to use that closet to cover their assault of another inmate. Mr. Economakos failed to notice, let alone stop that assault. After a hearing, the Hearing Officer determined that Mr. Economakos's misconduct amounted to violations of Career Service Rules: 16-60A (Neglect of Duty); 16-60B (Carelessness); 16-60K (failure to meet performance standards); and 16-60L (failure to observe written agency rules, regulations and policies).¹

The Hearing Officer considered the discipline imposed by the Agency under the requirements of CSR 16-20. This Rule states:

The purpose of discipline is to correct inappropriate behavior or performance, if possible. The type and severity of discipline

¹ The Hearing Officer also found the Agency had failed to prove a violation of CSR 16-60Z (Conduct Prejudicial), drawing a distinction between this Rule and the prohibition of "Conduct Prejudicial" found in Sheriff's Departmental Order 300.11.6, for which the Hearing Officer found a violation, following our decision in *In Re Khelik*, CSB 31-12A .

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.

On appeal, the Agency argues that in reducing the discharge to a thirty-day suspension, the Hearing Officer misinterpreted this rule. We agree.

We note this Rule specifically acknowledges that not all manifestations of misconduct are appropriate for the imposition of corrective discipline. In addition, the Rule plainly vests the Appointing Authority with significant discretion in the imposition of discipline. Consequently, this Rule does not allow the Hearing Officer to substitute his or her judgment for that of the Appointing Authority on the issue of discipline. We continue to believe an Agency's imposed discipline should be upheld if it is within the range of alternatives available to a reasonable and prudent administrator. *Adkins v. Division of Youth Services, Dept. of Institutions*, 720 P.2d 626, 628 (Colo.App.,1986); *Colorado Dept. of Human Services v. Maggard*, 248 P.3d 708 (Colo. 2011).

Discipline imposed by an Appointing Authority should be affirmed by a hearing officer unless that discipline has been imposed arbitrarily, that is, based substantially on considerations unsupported by record evidence, or that discipline is clearly excessive². In this case, we find that the penalty of discharge is not clearly excessive. We also believe the record contains substantial evidence supporting the decision to discharge Mr. Economakos, such as the fact: that Mr. Economakos knew the closet needed to be locked yet did not secure the closet; that he permitted inmates who he was supposed to be supervising to have unnecessary access to the closet; and that as a result of his having been derelict in his most basic duties to supervise and care for inmates, he permitted a group of inmates to assault another inmate. Given the rules violations and the serious consequences which flowed from these rules violations as found by the Hearing Officer, we find sufficient evidence in the record supporting Director Wilson's decision that the penalty of discharge so that the decision to discharge Mr. Economakos was within the range of alternatives available to a reasonable and prudent administrator.

We believe this is so notwithstanding the penalty analysis performed by the Hearing Officer. First, the Hearing Officer found that the Agency had withdrawn the most serious of the offenses alleged against Economakos, that being, that he had introduced contraband into the jail and that he had directed the assault against the inmate. We believe this to be irrelevant to a proper determination on the issue of discipline.

² See *City and County of Denver v. Weeks*, 10CA1408 (Colo.App. 2011) (unpublished)

We believe a more appropriate focus should have been on whether the discipline imposed was warranted by the misconduct that *was* proven. The record does not reflect that the Appointing Authority assigned discreet amounts of punishment which, taken together and only taken together, resulted in a total amount of discipline equaling discharge.³ Rather, the record reflects, for example, that the Appointing Authority, in determining that discharge was the appropriate penalty, did not take into account the unadvanced allegation of introducing contraband into the jail. Similarly, there is nothing in the record to indicate that Director Wilson took into account the claim that Economakos directed the assault on the inmate when determining the appropriate punishment. In giving weight to factors that the Appointing Authority did not consider in determining the amount of punishment to be administered, the Hearing Officer appears to have deprecated the seriousness of the offenses that actually were proven.

Next, the Hearing Officer engaged in a comparative discipline analysis. While such an analysis might have been appropriate had Mr. Economakos alleged discrimination, this was not the case. We continue to hold that our system is not a comparative discipline system. In any event, we do not believe that the comparative analysis demonstrated that the decision to discharge Mr. Economakos was outside the range of disciplinary alternatives available to a reasonable and prudent administrator or that the discipline was clearly excessive or arbitrary.

For these reasons, the Hearing Officer's decision to reduce Mr. Economakos' discharge to a thirty-day suspension is reversed, and the discharge is reinstated.

SO ORDERED by the Board on February 20, 2014, and documented this 24th day of March, 2014.

BY THE BOARD:


Colleen M. Rea
Co-Chair

Board Members Concurring:

Patti Klinge
Bob Nogueira
Derrick Fuller

³ We take administrative notice that discipline reviewed by the Denver Civil Service Commission often looks this way, with, for example, 10 suspended days being imposed by the Manager of Safety for one rule violation, and ten suspended days imposed for another rule violation, both stemming from the same incident. Thus, a hearing officer could easily (and correctly) determine that, not having proven one of the rule violations, the total discipline must be reduced by an amount equal to the discipline imposed for that specific unproven violation. There is nothing in this record that would lead us to believe that this was how Director Wilson arrived at his decision to discharge.