

**DECISION AND ORDER**

---

IN THE MATTER OF THE APPEAL OF:

**ERIC GIVENS**, Petitioner-Appellant,

vs.

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

---

Sgt. Eric Givens (Appellant) was issued a two-day disciplinary suspension by the Denver Sheriff Department and the Department of Safety (Agency) for assisting Captain Phazaria Koonce in her efforts to afford preferential treatment to a politically prominent person who was turning herself in pursuant to an arrest warrant that had been issued against her<sup>1</sup>. The Agency had determined that the actions of Appellant were improper, caused disruption within the work force, and violated numerous internal and Career Service Rules. Appellant appealed his suspension to a Hearing Officer. The Hearing Officer, while finding that the Agency had proven some, but not all, of the alleged Rules violations, upheld the two-day suspension. Appellant then appealed the Hearing Officer's decision to this Board. We **AFFIRM** the Hearing Officer's decision.

Appellant first argues that The Hearing Officer misinterpreted the Agency's internal rule RR-200.19, which requires Deputy Sheriffs to use sound judgment and discretion in the performance of their duties. Appellant claims that in finding that he violated this rule, the Hearing Officer created a new standard involving use of an innate sense. We believe Appellant has twisted the words of the Hearing Officer. First, it is clear from the context of the Hearing Officer's reference to an "innate sense" that he is referring to nothing more than judgment and discretion.

Second, the Hearing Officer did find that Appellant was placed in what might appear to be a "damned if you do, damned if you don't" situation when he was given questionable orders by a superior officer, Captain Koonce. But the Hearing Officer did not determine, as Appellant suggests, that this appearance of a "damned if you do ..." situation was unresolvable. Rather, the Hearing Officer determined that based on the

---

<sup>1</sup> For her efforts, Captain Koonce was demoted to the rank of Deputy. She appealed that discipline to a Hearing Officer who affirmed the Agency's action. She also appealed the Hearing Officer's decision to this Board and we affirmed the Hearing Officer in case No. 34-17A.

obviously inappropriate nature of the orders Koonce was giving him to afford a potential prisoner preferential treatment, the correct option for Appellant to pursue was clear. Appellant was obligated to disobey the clearly unlawful orders issued by Koonce. By failing to disobey clearly unlawful orders, Appellant failed to exercise sound judgment and discretion. The fact that numerous other Deputies of a lesser rank recognized the unlawful nature of the orders is further record support for the Hearing Officer's conclusion that Appellant failed to use sound judgment and discretion.

Appellant next argues that the Hearing Officer erred by improperly equating the Agency's RR-300.21.1 with its RR-300.21.2. First, while we are not sure what "improperly equating" means, we are sure that this is not a claim that the Hearing Officer misinterpreted either Rule. Appellant does not offer any grounds under our Rule 21 for overturning the Hearing Officer's decision, which found that Appellant was guilty of violating the rule which prohibited affording arrestees and inmates preferential treatment. Indeed, it appears, based on this record, that the entire purpose of following Captain Koonce's unlawful requests was to afford an arrestee preferential treatment; which we believe is a violation of Rule RR- 300.21.2 requiring Deputies to maintain a strictly impartial attitude in the performance of their duties. <sup>2</sup>

Appellant also claims there is insufficient evidence in the record to support the Hearing Officer's decision. We disagree. The record is replete with instances of Appellant attempting to afford an arrestee preferential treatment or him assisting Captain Koonce in her efforts to afford the same arrestee preferential treatment.

The plain showing of favoritism to a politically connected arrestee is more than sufficient evidence demonstrating the failure of Appellant to perform his duties with an impartial attitude. And the disruption Appellant's (and Koonce's) efforts at providing preferential treatment caused within the Agency at the time make it impossible for us to swallow Appellant's assertion that his misconduct was just his attempt to keep his facility moving along efficiently.

Appellant next claims that the Hearing Officer misapplied Agency regulation RR-300.11.6, which is the Agency's internal rule prohibiting conduct prejudicial. Appellant claims that the Hearing Officer misapplied the conduct prejudicial rule because it was Captain Koonce that performed most of the conduct prejudicial. But the Hearing Officer determined that Appellant, himself, had engaged in acts constituting conduct prejudicial. We find his factual findings in support of this conclusion to be supported by record evidence.

Appellant next argues that the Hearing Officer's decision sets bad policy precedent in that it encourages the constant questioning of superior officers by subordinates. We do not believe the Hearing Officer's decision does this. Rather, we

---

<sup>2</sup> Regardless, as the Agency demonstrates in its brief, the Hearing Office did not conflate or confuse the two rules.

believe the Hearing Officer's decision supports the proposition that plainly unlawful orders must at least be questioned and ultimately not followed.

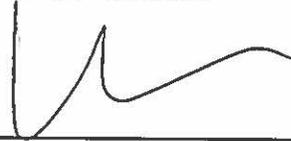
Finally, Appellant argues that he should have been given a mitigated penalty, rather than the presumptive matrix penalty he was issued. We see nothing in this record that would require the imposition of a mitigated penalty. Indeed, from our standpoint, the fact that the Appellant was a twenty-three-year veteran without prior discipline makes these acts of misconduct all the more shocking and disappointing. The Appellant should have known better.

Neither Rule nor policy consideration requires the imposition of a mitigated penalty and we find no error committed by the Hearing Officer in his upholding of the presumptive two-day suspension.

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

SO ORDERED by the Board on May 17, 2018, and documented this 18th day of October 2018.

BY THE BOARD:



\_\_\_\_\_  
Karen DuWaldt, Co-Chair

Board Members Concurring:

Neil Peck

Tracy Winchester