CAREER SERVICE BOARD,
CITY AND COUNTY OF DENVER, STATE OF COLORADO
Appeal No. 10-14A

DECISION AND ORDER

IN THE MATTER OF THE APPEAL OF:

DEANNA GORDON,

Appellant,

v.

DEPARTMENT OF SAFETY, DENVER SHERIFF'S DEPARTMENT

and the City and County of Denver, a municipal corporation, Agency.

Deanna Gordon ("Appellant") was discharged from her employment as a Denver Deputy Sheriff for various acts of misconduct which, for the most part, were admitted by Appellant to have occurred. She appealed her termination to a Hearing Officer who, after a full *de novo* evidentiary hearing, affirmed the Agency's decision to terminate her.

Appellant has asked us to review and overturn the decision of the Hearing Officer. Because we believe the Hearing Officer's decision was supported by record evidence and sound reasoning, we affirm.

Appellant first argues that the Hearing Officer failed to apply all the factors under the DAG in affirming the discipline imposed by the Agency. "DAG" would appear to stand for Disciplinary Advisory Group. We presume Appellant's argument to actually be that the Hearing Officer failed to abide by the Disciplinary Handbook which explains the Sheriff Department's Disciplinary Matrix. But we see nothing in Federal law, State law, City Charter, City Ordinance or our Rules which would bind the Hearing Officer to anything written in the Matrix or the Handbook. The Hearing Officer, when considering the reasonableness of imposed discipline, may certainly consider the Handbook and the Matrix in making the ultimate decision concerning the reasonableness of discipline imposed, but is bound by neither. The disciplinary Matrix was created to help disciplinary decision makers impose fair and consistent discipline. It was not designed and cannot operate to impose any restrictions on how our hearing officers perform their duties.

We find it significant that Appellant does not argue that the final Agency disciplinary decision maker, the Deputy Director of Safety (DDOS) did not make a required analysis under the

Handbook and/or Matrix[1]. Indeed, or review of the record reveals that the DDOS made a thorough Handbook/Matrix analysis of each charge of misconduct in an effort to determine its proper classification within the disciplinary matrix. DDOS also conducted a thorough review, also within the parameters set out by the Handbook, as to why he chose to go outside of the matrix[2], that is, why he chose to ignore the recommended discipline set out by the Matrix (which would have called for various levels of suspension for each charge) and impose the discipline of discharge. (See, e.g., Transcript from 6-18-14, pages 116-136.)

The predominance of Appellant's argument amounts to a claim the Hearing Officer erred in finding the imposed discipline to be reasonable. But this argument requires us to re-weigh the evidence in the record considered by the Hearing Officer supporting his decision to uphold Appellant' discharge. And while we can do this in this particular instance (because it involves the correctness of the ultimate issue of the imposed penalty) we see no reason to. The Hearing Officer's decision is supported by record evidence. Further, we find it reasonable in light of the record facts relied on by the Hearing Officer. We see no reason to disturb his determination as to the reasonableness of the penalty imposed.

The Appellant next argues she had a reasonable expectation that the Hearing Officer would follow the Handbook guidelines. We disagree. We see nothing in the handbook which would lead a reasonable individual (or even an unreasonable one) to believe that our Hearing Officer, in making a decision on a disciplinary appeal would be bound to follow every, or any, guideline or procedure in the Handbook. As we have mentioned, the Handbook was designed to assist the Department of Safety in arriving at fair and consistent discipline. Maybe it could be said that Appellant had a reasonable expectation that the Department of Safety would follow the guidelines and procedures in imposing discipline, but extending that understanding to include the Career Service Hearing Officer, or this Board, is not reasonable. In any event, it appears to us that the Department of Safety did not violate the tenets of the Matrix in that the Matrix permits the imposition of discipline outside of and beyond Matrix under circumstances which are present in this case. If Appellant had any expectations to the contrary, those expectations were unreasonable and certainly did not bind the Hearing Officer or this Board.

Appellant also argues to us that the case of *Department of Health v. Donahue,* 690 P.2d 243 (Colo. 1984) compels us to rule in her favor. We disagree. We see no applicability of *Donahue* to the case before us. *Donahue* involved a probationary employee of the State of Colorado's Department of Health who had been terminated without the benefit of a hearing prior to termination. Per State regulation imposed on its agencies, Donahue was required to receive a hearing prior to her discharge. She did not receive that hearing. The Courts held her rights had been violated. In *Donahue*, the State, a superior governmental entity, had imposed by regulation a requirement on its agencies, that is, on inferior or subordinate governmental entities. That is not our case. Here, Appellant claims that one "inferior" agency may impose its "legislative" will

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[1] To the extant Appellant has argued that DDOS did not make a Handbook/Matrix analysis as to every factor listed in the Handbook for imposing discipline outside of the Matrix, we hold that an analysis of every single factor listed in the Handbook is not required in every single case. The imposition of discipline outside of the Matrix recommendations is, per Handbook Section 25.1, within the discretion of the DDOS, and the factors listed for imposing discipline beyond the Matrix are intended to inform the DDOS's use of that discretion.

[2] The Handbook and Matrix explicitly permit the disciplinary decision maker to go outside of the Matrix, that is, impose discipline greater or lesser than the Matrix specifically recommends, where the decision maker finds special circumstances.

on a separate agency that is arguably "superior" to it in the respect that the Hearing Officer and this Board have the power to review and overturn actions taken by that inferior agency. We reject this contention.

In sum, we find no misinterpretation of any Career Service Rule and Law, or any provision of the Matrix or Handbook in the Hearing Officer's decision to uphold the imposed discipline. Similarly, we find no bad precedent set by the Hearing Officer making an independent determination as to the reasonableness of the Agency's imposed discipline. This is something the Hearing Officer is required to do.

We do, however, perceive an unacceptable policy precedent should we adopt Appellant's argument; specifically, were we to adopt Appellant's argument, we would essentially be holding that an Agency can write an internal rule which could bind our hearing officers and affect the method in which they carry out their duties. We do not believe that any City Agency other than this Board has the authority to do this.

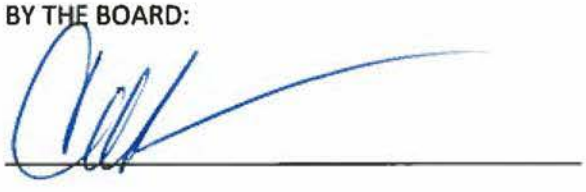
Finally, Appellant argues that the Hearing Officer erred in considering facts that were not relied upon by the Agency when electing to terminate Appellant. We do not believe this argument is well stated. It is true that the Sheriff did not rely on Appellant's defiant tone during Internal Affairs interviews in recommending her termination. This, however, is immaterial in that the Sheriff was not the decision maker on the discipline. The DDOS was the decision maker and he *did* rely on Appellant's defiant attitude as one factor supporting his decision to discharge the Appellant. (See, Transcript from 6-18-14, page 133:3-11.)

In addition, in our *de novo* hearing system, the Hearing Officer is tasked with determining the reasonableness of the imposed discipline. In doing so, he may consider any evidence in the record. Evidence of Appellant's defiant attitude was properly in the record and the Hearing Officer was, therefore, well within his rights to consider such evidence.

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

SO ORDERED by the Board on April 16, 2015, and documented this 16th day of July, 2015.

BY THE BOARD:



Chair (or Co-Chair)

Board Members Concurring:

Gina Casias, Esq. (Co-Chair)

Patti Klinge

CERTIFICATE OF DELIVERY

I certify that I delivered a copy of the foregoing **DECISION AND ORDER** on July 16, 2015, in the manner indicated below, to the following:

Career Service Hearing Office

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