

DECISION AND ORDER

IN THE MATTER OF THE APPEAL OF:

GREGORY GUSTIN, Appellant-Petitioner,

vs.

DEPARTMENT OF AVIATION, PARKING AND TRANSPORTATION,
and the City and County of Denver, a municipal corporation,
Agency- Respondent.

Gregory Gustin (Appellant) is a Landside Service Agent II in the Revenue Management Division of Denver International Airport (Agency). His responsibilities include enforcing rules applicable to limousine and shuttle drivers concerning the solicitation of passengers. These limousine and shuttle drivers are considered customers of the Agency. The Agency issued Appellant a 10-day suspension for making a disrespectful and unprofessional comment to one of these customer- drivers. Appellant appealed his suspension to a Hearing Officer. The Hearing Officer upheld the suspension. Appellant next appealed the Hearing Officer's decision to this Board. We **AFFIRM** the Hearing Officer's decision.

The grounds available to us for overturning a Hearing Officer's decision are limited. Those grounds are:

A. New evidence: The Board may reverse a decision based on new evidence if the evidence is (1) such that it could not, with reasonable diligence, have been discovered at the time of the hearing; (2) favorable to the party appealing to the Board; (3) pertinent to a determination of at least one issue of the appeal; and (4) of such substance and importance that consideration of the evidence could result in a different outcome of the case.

B. Erroneous interpretation of applicable authority: The Board may reverse a decision based on an erroneous interpretation of any applicable legal authority. A Hearing Officer's interpretation of applicable legal authority is subject to de novo review.

C. Policy-setting precedent: The Hearing Officer's decision is of a precedential nature involving policy considerations that may have effect beyond the appeal at hand.

D. Insufficient evidence: The Hearing Officer's decision is not supported by the evidence. The Board may only reverse a decision on this ground if the Hearing Officer's decision is clearly erroneous; or

E. Lack of jurisdiction: The Hearing Officer does not have jurisdiction over the appeal. A Hearing Officer's assertion of jurisdiction over an appeal is subject to de novo review.¹

Despite these clear requirements, Appellant, in his Petition For Review², described the following as his basis for our review:

The Hearing Officer's decision involved an incomplete list of relevant facts, witness statements, an over-reliance on opinions re: a national presidential election, denial to be questioned about a key piece of evidence – marked by the City Attorney as an exhibit prior to the appeal hearing – and yet not allowed to be entered into evidence, and failure of Department of Aviation to hand over relevant and requested items for discovery prior to and in preparation for the appeal hearing. These relevant facts were also not allowed to be enumerated and explained to either the appeal hearing nor the previous two disciplinary hearings.

We do not believe Appellant has adequately stated any grounds for us to properly review the Hearing Officer's decision. Appellant, at best, has complained of discovery rulings and evidentiary rulings (issued during the course of the hearing) made by the Hearing Officer with which he disagrees. Generally, the conduct of discovery is within the discretion of the Hearing Officer. Our review of this record reveals no abuse of that discretion in any discovery ruling made by the Hearing Officer. Similarly, whether certain questioning is allowed, or whether certain evidence may be adduced and admitted into the record is also typically within the discretion of the Hearing Officer. Again, we see no abuse of that discretion by the Hearing Officer.

And if we were to interpret Appellant's *pro se* filings extremely liberally and determine, for example, what the Appellant actually meant to say was there was insufficient evidence to support the Hearing Officer's conclusions, or that the Hearing Officer, in finding that Appellant committed rules violations, misinterpreted those rules, we would still affirm the Hearing Officer's decision. All the facts found by the Hearing

¹ At the time this appeal was originally brought, the above noted text was Career Service Rule 19-61(D). It has since been renumbered and is not Rule 21-21.

² The Appellant did not file a brief in support of his Petition for Review. All our observations concerning Appellant's position on his appeal are, therefore, taken from his Petition. And while we did not do so, the Appellant's failure to file a brief could have justified our dismissal of the appeal as having been abandoned.

Officer are well-supported by record evidence and we do not believe that in reaching his findings and conclusion, the Hearing Officer misinterpreted any Career Service rule, law, or agency regulation. We believe the record supports the Hearing Officers findings and conclusions that Appellant committed the alleged rules violations and that a ten-day suspension is not an unreasonable penalty under the circumstances.

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

SO ORDERED by the Board on February 15, 2018, and documented this 7th day of June, 2018.

BY THE BOARD:



Neil Peck, Co-Chair

Board Members Concurring:

Patricia Barela Rivera

Tracy Winchester