HEARING OFFICER, CAREER SERVICE BOARD
CITY AND COUNTY OF DENVER, COLORADO

Appeal No. 31-06

DECISION

IN THE MATTER OF THE APPEAL OF:

JARED SIMPLEMAN,
Appellant,

vs.

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

I. INTRODUCTION

The Appellant, Jared Simpleman (the Appellant), appeals the termination of his employment by the Denver Sheriff's Department (the Agency) on May 11, 2006. The Agency alleged the Appellant engaged in misconduct resulting in violation of specified sections of the Career Service Rules and Denver Sheriff's Department Orders by playing cards on duty, by leaving a jail door unsecured in a felony dormitory, and by lying to investigators concerning the former two allegations. The Appellant denied he violated any Career Service Rule or Department Order, and seeks reversal of the termination.

A hearing concerning this appeal was conducted by Bruce A. Plotkin, Hearing Officer, on September 13, and September 21, 2006. The Appellant was represented by Reid Elkus, Esq. and Donald Sisson, Esq. The Agency was represented by Joseph DiGregorio, Assistant City Attorney, with Major Deeds serving as advisory witness.

The following Agency Exhibits were admitted by stipulation: 1 through 3, 4-1 through 4-11, 4-16 (last two lines and pre-printed matter only), 4-17, and Exhibits 5 through 9. Exhibits 4-12, 4-13, and 4-15 were withdrawn. Exhibit 4-14 was admitted over objection. The remainder of Exhibit 4-16 and the 0900 entry for March 12, 2006 in Exhibit 4-14 were admitted over objection. The Appellant offered no additional Exhibits.

The Agency presented the following witnesses: the Appellant as an adverse witness, Manager Alvin LaCabe Jr., Sergeant Harold Minter, and Sergeant Kelly Bruning. The Appellant presented Deputy Jason Martinez as his witness.

II. ISSUES

The following issues were presented for appeal:

A. whether the Appellant violated Career Service Rule (CSR) 16-60 A, B, E, L, U[1], or Y[2];

B. if the Appellant violated any of the above-stated CSRs, whether the Agency's termination of the Appellant's employment was reasonably related to the seriousness of the offense(s) and took into consideration the Appellant's past record.

III. FINDINGS

A. Factual Findings

Prior to his termination, the Appellant worked as a Denver deputy sheriff for three years, entirely at the Denver County Jail. On March 12, 2006, he and Deputy Jason Martinez (Martinez) were working together from 2:00 a.m. to 12:00 noon on a floor designated as 12B, the second floor of a three-floor building. At that time, the 12B tier housed felons. It contains dormitory-style bunk beds with shared bathroom facilities, rather than individual cells and facilities. Two deputies are assigned to each shift for 12B compared with one deputy for misdemeanor dormitories. On March 12, 2006, 12B contained 44 felons. [Exhibit 4-14].

On the morning of March 12, the shift supervisor, Sergeant Harold Minter (Minter), was making rounds. When he arrived at 12B at about 9:15 a.m., he found the main door (grill) to 12B unlocked. When he entered, he observed the Appellant and Martinez seated at the officer's table across from each other. Each was holding playing cards fanned out, and there was a pile of cards between them on the table. Neither deputy noticed Minter enter 12B. When Minter came to within three feet of the deputies, he exclaimed "what the fuck are you doing?" surprising both deputies who hadn't noticed Minter enter 12B. The Appellant immediately replied "playing cards," while Martinez quickly lowered his cards under the table and said nothing. Minter returned to the Sergeant's office and made the following notation in the Appellant's Employee Performance Evaluation Review. "While conducting Rounds I observed D/S [Deputy Sheriff] Simpleman playing cards on duty with another officer in 12A." Minter's designation of the location as 12A, rather than 12B, was an inconsequential mistake.

Two days later, Minter met with the Appellant and Martinez. He told them about his notation over the card-playing incident and also told them it was a security violation to

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[1] CSR 16-60 U was re-lettered to 16-60 V on June 12, 2006, with no substantive change.
[2] CSR 16-60 Y was re-lettered to 16-60 Z on June 12, 2006, with no substantive change.

leave the 12B grill unlocked. The deputies asked if Minter intended to refer the case to Internal Affairs for investigation, to which Minter replied "as far as I'm concerned this is it, it's done, it's over." Neither deputy disputed Minter's notation.

The following day, Sergeant Bruning (Bruning) of the Internal Affairs division of the Sheriff's Department undertook an investigation concerning Minter's allegations. After conducting interviews with Minter, Martinez, and the Appellant, Bruning presented his report at a pre-disciplinary meeting on April 17, 2006 attended by the Appellant with his attorney, Reid Elkus, Esq. Following the meeting, Manager LaCabe (LaCabe) issued the Agency's notice of termination on May 11, 2006. The Appellant filed a timely appeal on May 15, 2006.

B. Jurisdictional Findings

The City Charter §C5.25(4) and CSA 2-104 b) 4) require the Hearing Officer to determine the facts in an appeal *de novo*, meaning to hear the evidence as though no previous action had been taken. Turner v. Rossmiller, 532 P.2d 751 (Colo. App. 1975), 1975 Colo. App. LEXIS 969, (add'l citations omitted).[3] I find both issues, whether the Appellant breached Career Service Rules, and whether discipline was appropriate, are properly before me.

IV. ANALYSIS

A. CSR 16-60 A. Neglect of Duty.

The factual issue to decide here is whether the Appellant was playing cards on duty. The legal issues are: if the Appellant was playing cards on duty, whether that act constitutes a neglect of duty; whether the Appellant was responsible for securing the 12B grill; if so, whether leaving the grill unlocked for 15-20 minutes constitutes a neglect of duty under the circumstances.

1. Whether the Appellant was playing cards on duty. The Appellant insists he and Martinez were not playing cards, but merely sorting the cards of an UNO deck at the request of several inmates. Both the Appellant and Martinez testified that, beginning around 6:00 a.m. that morning, inmates complained the UNO deck was short. Martinez stated the inmates complained "a lot of times" that morning [Martinez testimony], while the Appellant stated inmates asked him "three to four times." [Appellant testimony]. The importance of the complaint is that inmates gamble possessions in their card and other games, so that perceived cheating could lead to violence. [Martinez and Appellant testimony]. I deem the following evidence relevant to the Appellant's and Martinez' assertion they were counting, and not playing, UNO cards.

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[3] The Rossmiller court found the Hearing Officer had authority only to recommend findings and conclusions to the Career Service Board, while the Board retained *de novo* review power. The Board subsequently delegated its *de novo* review functions to the Hearing Officer, CSR 19-30, 19-50, 19-53, 19-55, and retained only limited powers of review. CSR 19-61.

a. The deputies were seated in a manner such that their cards were concealed from the other, as when playing cards, rather than sitting side by side or showing their cards, as in a cooperative effort to account for missing cards.

b. The Appellant's holding cards in a fan was more likely evidence of playing cards, rather than evidence of sorting cards into their various colors and numbers as alleged by the Appellant.

c. There was no evidence Minter had any ill-will or other motive to fabricate his statement that it was evident the deputies were playing and not counting cards.

d. Minter clearly recalled when he asked "what the fuck are you doing," the Appellant spontaneously answered "playing cards," while Martinez attempted to hide his cards. Both reactions strongly ratified Minter's impression they were playing cards.

e. When Minter informed the deputies two days later that he entered a negative work evaluation concerning the card-playing, neither deputy disputed they were playing cards. Only when under investigation a week later did they deny playing cards, raising the specter of self-interest that was absent from Minter's unimpeached testimony.

f. The Appellant later claimed his "playing cards" answer was sarcastic, and that Minter, who is not his immediate supervisor, simply doesn't know him well enough to have understood the humor; however if Minter did not know the Appellant well enough to have understood the sarcastic intent, then conversely, the Appellant did not know Minter well enough to have offered such a statement and expect the irony to be understood. In addition, the Appellant made no contemporaneous verbal or visual indication that his answer was anything other than an accurate response to Minter's question. Under the circumstances - a superior officer demanding "what the fuck are you doing" - the Appellant's later "sarcastic" explanation is not credible.

g. Both the Appellant and Simpleman testified they were counting UNO cards due to complaints from "four to five inmates" [Appellant testimony] or "a lot of times" [Martinez testimony] the morning of March 12, 2006. Incongruously, no cards were missing after they finished counting. [Appellant and Simpleman testimony].

For these reasons, I find, by a preponderance of the evidence, the Appellant and Simpleman were playing cards, not counting them. The Appellant did not dispute his card-handling occurred on duty.

2. Whether playing cards on duty constitutes a neglect of duty under CSR 16-60 A.

a. CSR Rule 16-60 A. This is a case of first impression. With the repeal of CSR 16-50 A. 1), Gross negligence or willful neglect of duty, and its apparent replacement by this rule, there now appears to be little substantive difference between this rule and CSR 16-60 B., Carelessness in performance of duties and responsibilities. Semantically, the terms differ in that "neglect of duty" implies a failure to perform a duty, while "carelessness in the

performance of duties" implies a slipshod practice of duty. However, both terms incorporate the concept of negligence and each term is defined, at least in part, by the other. "Neglect" means "to fail to carry out (an expected or required action) through carelessness or inattention," while "carelessness" means "negligence." *Webster's Unabridged Deluxe Edition (1979).*

As a practical matter, this change reduces the burden on the Agency to prove a violation under CSR 16-60 A., compared with its predecessor, CSR 16-50 A. 1), since the element of deliberation or consciousness is no longer required. *Compare* In re Espinoza, CSA 30-05 (1/11/06), In re Trujillo, CSA 28-04 (5/27/04), In re Stockton, CSA 159-02, 15 (12/4/02). Therefore, to sustain a violation under CSR 16-60 A., the Agency needs only to establish the following by a preponderance of the evidence: (1) the Appellant had an important work duty; (2) he was heedless or unmindful of that duty; (3) no external cause prevented the Appellant's performance of that duty; (4) the Appellant's failure to execute his duty resulted in significant potential or actual harm.

b. Application of CSR 16-60 A. to the present case. It is conceivable that deputies might play or handle cards on duty yet not neglect their duties, for example, in order to relieve tedium where surveillance of inmates is not actively required, or as part of their duty to account for missing game pieces so as to lessen the risk of a violent reaction to perceived cheating. The Appellant claimed even though he and Martinez were counting cards, they were aware of inmates' activity in 12B. [Appellant testimony].

The Appellant's duties included devoting undivided attention to the safe-keeping of inmates, and not to engage in "playing video or board games, watching TV or other activities not directly connected with official duties." [Exhibit 5, 200.9, *see also* 200.16]. Due to the heightened risk associated with the felon dormitories, it is critically important for deputies to be alert to inmate activity. For that reason, two deputies are assigned, rather than one, as in the misdemeanor dormitories. [Appellant testimony].

Minter testified neither the Appellant nor Martinez saw him enter 12B, and remained unaware of him until he was about three feet away and asked "what the fuck are you doing?" Minter described their reaction as surprised. [Minter testimony]. The Appellant replied he was aware of Minter entering 12B [Appellant testimony]. Since Minter's observation is irreconcilable with the Appellant's and Martinez' claims, I must determine the relative credibility of the witnesses.

I weighed the following in determining the credibility of the witnesses' irreconcilable statements: Martinez' strong non-verbal statement in lowering his cards under the table; Minter's already-established credibility; Minter's credible description of the deputies' reaction to seeing Minter as surprised after Minter had entered 12B undetected; the evident motivation for the Appellant to cover up his card-playing, compared with the lack of evidence that Minter had a motive to fabricate his testimony; and the Appellant's failure to explain his admission, until one week later, when he was under investigation by Internal Affairs.

In light of these findings, I conclude Minter's contemporaneous observation that the Appellant was unaware of Minter entering 12B, was more credible than the Appellant's later denial. Since Minter surprised the Appellant during his entry and approach to the officer's desk, the Appellant neglected the activities of inmates in 12B during the same time. Even assuming the Appellant was counting cards, which he said took at least ten minutes, he more likely than not, neglected inmate activity during that time, as evidenced by his lack of awareness of Minter entering 12B. For these reasons, the Appellant's playing cards with Martinez on March 12, 2006 was a neglect of duty under CSR 16-60 A.

3. Whether the Appellant was responsible for securing the 12B grill.

The main door to and from 12B is called the grill, and consists of vertical and horizontal metal bars. The Appellant claimed Martinez had the only keys to 12B, but he did not dispute his shared responsibility for ensuring the grill is locked. He disputed only when the grill should be locked according to current 12B post orders.

4. Whether the Appellant's leaving the grill unlocked for 20 minutes constitutes a neglect of duty.

The Agency found the Appellant violated his post orders for 12B, which require the grill "will be closed and locked when not in use." [Exhibit 8, p.1]. The Appellant protested he was penalized under an obsolete order which reads the grill "will be closed and locked when not in actual use for entry or exit." [Exhibit 3, p.2].

The Appellant claimed, given the discrepancy between the old and new 12B Post Orders, the Agency was required to present the drafter of the newer post order, in order to explain its intent. Such practice would result in impermissibly cumbersome hearings where each dispute over the meaning of an order, rule or law, would require testimony from the drafters. In addition, the option to present such explanatory testimony was available to the Appellant. The remaining issue is to determine if the difference between the old and new 12B post orders was material.

The Appellant's duties on March 12 required him to keep the grill locked when not "in use." [Exhibit 8, p.1]. The older order cited by the Agency required the grill to remain locked when not "in actual use for entry or exit." [Exhibit 3, p.2]. While the old rule attempted, perhaps inartfully, to specify the conditions under which the grill may be opened, a plain reading of the old and new orders makes it evident both express the same instruction, to keep the grill locked except when necessary to use it. The Appellant failed to prove there is a substantial difference between the two orders, and is therefore not prejudiced by the difference in semantics. Martinez unlocked the grill after the five-minute chapel call, then left it unlocked while he returned to the officer's table to re-engage in his card playing with the Appellant. [Appellant testimony]. 12B Inmates were not allowed to go to chapel that morning, but the grill remained unlocked while the deputies played cards, and until after Minter's departure, a total of 15-20 minutes. [Appellant testimony].

Given these facts, the grill was not "in use" for 15-20 minutes. No reasonable interpretation of either post order would permit such an expansive definition of "in use" as claimed by the Appellant. Therefore, the Appellant's dispute over semantics is immaterial. In colloquial terms, the disparity between the old and new post orders is a distinction without a difference.

The Appellant also argued that, since he was disciplined under the prior post order, he was not afforded due process. He claims the Agency failed to provide due process in that he was not provided notice of the violation under which he was disciplined. Because the difference between the old and new post orders is immaterial and the Appellant acknowledged the current rule, this claim fails.

The Appellant also argued it is common practice for deputies to unlock and leave the grill door unlocked after the five minute call for mass-movement activities such as chapel or meals, and such practice has not been met with discipline. [Appellant testimony]. Even if the practice of leaving the door unlocked following a five-minute call is condoned, no evidence established that leaving the grill unlocked and unattended for 20 minutes, is permissible under the 12B post orders.

For the reasons stated in this section, the Appellant's failure to lock the 12B grill for 15-20 minutes after chapel call was a neglect of duty. Therefore, the Appellant violated CSR 16-60 A. by a preponderance of the evidence.

B. CSR 16-60 B. Carelessness in performance of duties and responsibilities.

CSR 16-60 B. replaces repealed CSR 16-51 A. 6) with identical language. Therefore cases under the prior rule are instructive. To prove the Appellant was careless in the performance of a duty or responsibility, the Agency must establish the Appellant had an important work duty or responsibility, his performance was heedless of that duty, with the result that potential or actual significant harm resulted. *See* In re Owoeye, CSA11-05 (6/10/05). In order to give full meaning to this rule, I distinguish it from CSR 16-60 A., Neglect of Duty, in that I review the Appellants acts (performance), not his omissions (neglect), in light of his duty. Without this distinction, the two rules would merge, since the same facts and standards would prove both violations.

1. Work duty.

The Appellant's duties to devote undivided attention to inmate activity are stated in Denver Sheriff's Department Rules 200.9, and 200.16, [Exhibit 5]. His duty concerning the securing of the 12B grill is contained in 12B post orders, [Exhibit 8].

2. Heedless performance.

LaCabe stated his rationale for discipline under this rule was the same as for Neglect of Duty, above. [LaCabe testimony]. The evidence, above, established the Appellant played cards while on duty, in violation of Sheriff's Department rules 200.9 and 200.16, and he failed

to lock the 12B grill for 20 minutes after chapel call, in violation of 12B post orders, [Exhibit 8]. Both these events were omissions of the stated duties rather than heedless or slipshod performance of those duties. Consequently, the Agency did not prove the Appellant violated CSR 16-60 B. by a preponderance of the evidence.

C. CSR 16-10 E. Any act of dishonesty, which may include, but is not limited to:

3. Lying to superiors…

It was established by a preponderance of the evidence, above, that the Appellant was playing UNO with Deputy Martinez on March 12, 2006, rather than counting UNO cards as he claimed. *Perforce*, the Agency established the Appellant violated CSR 16-10 E when he continued to deny playing cards during Bruning's investigation and again during his pre-disciplinary meeting. Each denial was a violation of CSR 16-60 E.

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

Departmental Rules and Regulations

200.4 Deputy Sheriff [sic] and employees will not willfully depart from the truth, knowingly make misleading statements or falsify any report, testimony, or work related communication.

The Agency established the Appellant was playing, rather than counting UNO cards with Deputy Martinez on March 12, 2006. Consequently, the Appellant's continued representation to the contrary, during Bruning's investigation, constitutes a misleading statement and a false report in violation of Sheriff's Department Rule 200.4. Likewise, his representation that he was counting cards, made to committee members at his pre-disciplinary meeting on April 17, 2006, was a misleading statement and was false testimony in violation of Sheriff's Department Rule 200.4.

200.9 Deputy Sheriffs and employees to devote undivided attention to duties. Reading, playing video or board games, watching TV or other activities not directly connected with official duties, while on duty, is prohibited.

The Appellant was playing cards while on duty March 12, 2006. This activity falls within the proscription contemplated by Rule 200.9, and therefore constitutes a violation of this rule. The Appellant's denial of playing cards has already been discredited for reasons stated above at IV. A. 1.

200.16 Deputy Sheriff [sic] and employees will not fail, neither [sic] willfully or [sic] through negligence, incompetence or cowardice, to perform the required duties of their assignment.

The Agency has previously established the importance of the Appellant's duty to safeguard the grill to 12B as required by 12B post orders, [Exhibit 8, Exhibit 3]. Based upon the findings, above, the Appellant was charged with and failed to secure the 12B grill on March 12, 2006. This failure of duty constitutes negligence in violation of Sheriff's Department Order 200.16. The Appellant's claim that Martinez had the keys and was somehow more responsible for securing the grill was discredited by his own admission of shared liability for 12B post orders, including maintaining a secured grill.

300.21 All employees of the Department shall read and obey all directives and orders issued by the Mayor, the Manager of Safety, Director of Corrections and Undersheriff, command officers or their designees that relate to the Sheriff Department's duties and assignments. Employees shall also read, maintain familiarity with, and carry out all Department Orders, Post Orders and written procedures relating to their specific duty posts and assignments.

LaCabe referred to the above-referenced Departmental Orders and 12B Post Orders in his assessment as to why the Appellant was in violation of this order. The Appellant, Martinez, and Deputy Turner all testified at hearing that the Agency failed to provide, failed to train, or inconsistently trained them in the procedure for securing the 12B grill, yet the Appellant acknowledged familiarity with Exhibit 8, which contains the 12B Post Orders in effect on 3/12/06. By playing cards in violation of Department Rule 200.9, and failing to lock the 12B grill for 15-20 minutes, in violation of Rule 200.16, the Appellant failed to carry out those orders, both in violation of Sheriff's Department Rule 300.21.

E. CSR 16-60 U. Failure to use safety devices or failure to observe safety regulations which: results in injury to self or others; jeopardizes the safety of self or others; or results in damage or destruction of City property.

The 12B tier housed felony inmates in a dormitory setting. There was no evidence that 12B housed only non-violent offenders. Given that two deputies were assigned to 12 B, it seems likely 12B contained at least a mixed violent and non-violent population, if not an all-violent population. These facts alone establish a heightened level of risk associated with safeguarding this population, so that safety protocols are more critical than for misdemeanants or non-violent felons.

The Appellant minimized the risk of leaving the grill to 12B unlocked, stating even if prisoners accessed the stairs just beyond the grill, they could not access the downstairs hallway leading outside, because the stairs are gated at the bottom and require the 12A deputy on duty to open that grill. He also stated if inmates traveled upstairs from 12B, at most they could only talk to, and not physically interact with inmates on 12C. These explanations assume no other deputy is lax in maintaining grill security on the other tiers. Also, the unmonitored exchange of information or contraband between felons

carries its own risks. [LaCabe testimony]. I find the Appellant was responsible for maintaining the security of the 12B grill, that he failed to do so, and that, consequently, there was a significant risk of harm to himself and others in violation of CSR 16-60 U.

F. CSR 16-60 Y. Conduct prejudicial to the good order and effectiveness of the department or agency, or conduct that brings disrepute on or compromises the integrity of the City.

This rule establishes two new and independent violations: that the employee caused harm to his Agency, or that the employee caused harm to the City of Denver. The portion of the rule which addresses the internal (Agency) harm, states "[c]onduct prejudicial to the good order and effectiveness of the department or agency." The effectiveness of an Agency is its ability to carry out its mission. Good order is the internal structure and means by which an Agency accomplishes its mission. Thus, to sustain a violation under this facet of the rule, the Agency must prove the Appellant's conduct hindered the Agency mission, or negatively affected the structure or means by which the Agency achieves its mission.

There was ample evidence that a primary purpose of the Sheriff's Department is the safe-keeping of inmates. [LaCabe, Appellant, Exhibit 5, p.IV-6]. The Appellant's card playing and failure to secure the 12B grill for 15-20 minutes allowed the 12B inmates to remain unsupervised, and allowed them access to 12A and 12C tiers. The potential harm resulting from this neglect was established, above. Because the Appellant imperiled an important mission of the Agency, he was in violation of CSR 16-60 Y. The remaining portions of the rule were not implicated, and are therefore not addressed here.

V. CONCLUSION

The Appellant violated the following Career Service rules by a preponderance of the evidence: CSR 16-60 A., Neglect of Duty, CSR 16-10 E. Any act of dishonesty..., CSR 16-60 L. Failure to observe written departmental or agency regulations, policies or rules, and CSR 16-60 Y., Conduct prejudicial.... What remains is to determine if the degree of discipline assessed was reasonably related to the gravity of the offenses, and took into consideration the Appellant's record.

VI. DEGREE OF DISCIPLINE

The Appellant argued the Agency engaged in wrongful comparative discipline, yet he asks his case to be judged on precisely that basis, by making a numeric comparison between the disciplinary histories of Martinez and the Appellant. Discipline is and should not be a matter of mathematical precision, but rather the carefully-considered result of examining the facts and circumstances of the particular case, as well as the disciplinary record of the individual, including the nature and extent of similar discipline. The significant circumstances here include: the Appellant just finished serving a

substantial suspension one week earlier for violations including dishonesty; since he began working as a Deputy Sheriff in 2003, he was disciplined every year. The Appellant continued to deny any wrongdoing after both cases involving dishonesty; his continuing denials have proven his untrustworthiness, as LaCabe testified [LaCabe testimony]. In comparison, Martinez acknowledged his wrongdoing, and had not been previously served a substantial suspension. *Id.*

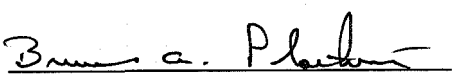
The Appellant received a verbal warning in 2003, followed by a written reprimand, then a 30-day suspension. The Appellant claimed he was unaware the verbal warning was discipline, and therefore LaCabe's choice of discipline in this case fails to follow progressive discipline. Even if the Appellant misapprehended the nature of his verbal warning, that does not mean it was improperly assessed or should not be considered by the Agency. Moreover, the terms of his verbal warning stated "[b]e advised that any subsequent abuse of security will give cause for more severe action." [Exhibit 4-17]. In addition, the Appellant can be under no false impression that his 30-day suspension was anything other than a substantial discipline at which time he failed to protest the Agency's failure to follow progressive discipline.

It was apparent LaCabe considered the Appellant's past record, and considered varying degrees of discipline. Most significantly, only one week before the incident in this case, the Appellant just finished serving a 30-day suspension for sleeping on duty and maintaining dishonesty about it. Finally, the disciplinary histories of Deputies Martinez and Simpleman were sufficiently dissimilar, so that a simple comparison between the number and types of discipline previously assessed against them fails as a basis upon which to assess the Appellant's discipline. LaCabe's choice to dismiss the Appellant fell within the range of discipline that was reasonably related to the gravity of the offense while taking into consideration the Appellant's previous discipline.

VII. **ORDER**

The Agency's dismissal of the Appellant on May 24, 2006 is **AFFIRMED**.

DONE this 20th day of October, 2006.



Bruce A. Plotkin
Hearing Officer
Career Service Board