

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

Appeal Nos. 61-10, 63-10, 66-10 and 67-10

---

**DECISION**

---

IN THE MATTER OF THE APPEAL OF:

**GARY ANDERSON and VICTORIA CONNORS,**  
Appellants,

vs.

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

---

**I. INTRODUCTION**

The Appellants, Denver Sheriff Department Major Gary Anderson and Major Victoria Connors, appeal the denial of their grievances by the Department of Safety, Denver Sheriff's Department (the Agency). The Appellants filed nearly identical grievances against the Agency, claiming the process the Agency used to appoint an acting division chief violated specified Career Service Rules. The Agency denied their grievances, leading to separate appeals which were consolidated for hearing by stipulation.

Anderson separately appealed the Agency's denial of his application for supplementary ("acting") pay during the three-month period he avers he assumed the duties of acting chief. That appeal was also consolidated.

A hearing concerning the combined appeals was conducted by Bruce A. Plotkin, Hearing Officer, on October 29, 2010. The Appellants were represented by Stanley M. Gosch, Esq., while the Agency was represented by Assistant City Attorney Jennifer Jacobson.

The parties stipulated to the admission of Agency exhibits 1-3, 5-8, and 12-21 as well as Appellant's exhibits A-S. Agency exhibits 4, 9, and 10 were also admitted. Anderson was the only witness for the Appellants. Mr. Peter Garritt and Acting Director Gary Wilson testified for the Agency. For reasons which follow, the Agency's denial of the Appellants' grievances are affirmed in part and reversed in part.

## **II. ISSUES**

The issues to be decided are:

**A. whether the Agency violated CSR 19-10 A. 2.a. by denying acting pay to Anderson from June 1, 2010 to August 29, 2010, pursuant to Denver Revised Municipal Code (DRMC) § 18-114.**

**B. whether the Agency's appointment of Major Deeds to the position of Acting Division Chief violated Career Service Rule (CSR) 19-10 A. 2. b. (i);**

## **III. FINDINGS**

The following is the top-down reporting structure for the uniformed personnel of the Agency:

Manager of Safety [non-uniformed]  
Deputy Manager of Safety [non-uniformed]  
Director of Corrections/Undersheriff  
Division Chief  
Major  
Captain  
Sergeant  
Deputy

The parties stipulated to the following:

1. Anderson and Connors are employed by the Agency as Denver Sheriff Department Majors.
2. The Denver Sheriffs Department's three chief positions oversee three divisions: the County Jail; the Downtown Division; and Technologies Support and Special Projects (TSP).
3. On June 1, 2010, Wilson was promoted from Chief of TSP to Acting Director of the Agency, leaving an opening for one of the three Chief positions.
4. On June, 1, 2010, Wilson assigned Elias Diggins, who was the Chief of the County Jail Division, to assume duties as Chief of the TSP Division as well.
5. On July 20, 2010, Wilson notified Anderson and Connors that he was going to abolish the existing promotion list for Division Chief.

6. On August 16, 2010, Wilson notified Major Phil Deeds he would be temporarily assigned as Division Chief with a nine and one-half percent (9.5%) increase in pay.
7. On August 17, 2010, Anderson and Connors were notified neither was selected for the open chief position.
8. August 29, 2010, Wilson made effective Deeds' appointment as acting Division Chief.<sup>1</sup>

In March 2009, the Career Service Authority (CSA) certified a list of eligible candidates for an open division chief position. The list included three out of the five majors pursuant to CSR 3-41: Anderson, Connors, and Diggins.<sup>2</sup> [Anderson testimony]. CSA posted the opening on CSA's website and in their offices. CSA rules were followed for the applicants' submission of resumes, questionnaires, proof of college degree, and permission for background investigation. From the certified list, then-Director of Corrections Lovingier selected Diggins as the new County Jail Division Chief pursuant to the hiring process defined in CSR 3. Anderson reported to then-Division Chief Wilson. [Anderson testimony]. On June 1, 2010, Lovingier retired, and then-Chief Wilson was appointed as acting Director of Corrections.

Wilson immediately assigned his former TSP chief duties to Diggins in addition to Diggins' oversight of the County Jail Division. [Exhibit J]. Two weeks after Diggins assumed the double-duty chief position, he told Anderson to run the TSP division. His only instruction to Anderson was "call if anything big happens." Anderson was the highest ranking officer present in TSP from June 1, 2010 to August 29, 2010, when Kieler became Division Chief of TSP. From June 1 to August 29, the Division Chief office in TSP remained empty. Diggins used it only once for a phone call. Diggins met with Anderson only three times during the same three months. Subordinates in TSP reported problems and questions to Anderson. The directors of the TSP's finance and the training units met regularly with Anderson. [Anderson testimony]. On prior occasions, when Wilson was Division Chief of TSP and he was absent, he authorized acting pay for Anderson [Anderson testimony]. Wilson was unaware Diggins told Anderson to run TSP. When Anderson asked for acting pay for running the TSP division, Wilson declined, leading to this appeal.

---

<sup>1</sup> Deeds status as acting division chief remained in effect through the date of hearing.

<sup>2</sup> The remaining two majors, Deeds and Horner, did not have college degrees, as required for the position, and they did not apply. [Exhibit R].

On July 20, 2010, Wilson notified Anderson and Connors he was abolishing the existing certified list from March 2009 and would undertake his own process to procure candidates for the position of Acting Division Chief of TSP. [Anderson testimony; Wilson testimony]. A director of corrections may request abolishment of a certified list, but the decision is left to the discretion of the Personnel Director of the Career Service. [Garritt testimony; CSR 3-43 D]. At Wilson's request, the Personnel Director abolished the division chief certification list. [Wilson testimony]. However, Wilson did not request a new certification list. Had Wilson requested a permanent Division Chief, he would have been required to hire from an existing certification list for the position. In the alternative, a recruitment process could have been reopened in order to receive new candidates pursuant to CSR 3. [Garritt testimony].

When Wilson became Acting Director, on June 1, 2010, promotional lists for vacant major, captain, and sergeant positions had expired. The existing certified list for a vacant sergeant position was over two years old, and former director Lovingier had not initiated the testing process for the sergeant position. [Anderson testimony]. At the time of hearing, Wilson had still had not initiated such a process. [Wilson testimony].

Wilson waived the college degree requirement for the open acting division chief, and invited all five majors to apply. [Anderson testimony; Exhibit 8]. The memorandum Wilson issued advertising the acting position stated a bachelor's degree was preferred, but not required, and that applicants were required to have two years experience as a major, and a valid driver's license. [Exhibit 8]. Wilson decided on a hiring process consisting of three interviews with three different panels, with Wilson sitting on all three panels. [Exhibit 8]. In Wilson's process, whoever scored highest would be awarded the acting Chief position, and would remain in that position until Wilson's acting director position became permanent. [Anderson testimony]. Despite Wilson's representation, in order to fill the Division Chief position with a permanent employee, Wilson would be required to follow the process provided for in CSR § 3, hiring from a CSA-provided certified promotional list. [Wilson testimony].

Deeds, Horner, Anderson, and Connors applied for the acting division chief position. Had the open chief position been permanent, only Anderson and Connors would have met the education requirements. [Anderson testimony; Exhibit R]. Wilson memorialized Major Deeds' assignment as Acting Division Chief in a letter dated August 16, 2010. Wilson's letter specified Deed's assignment was to be temporary and that Deeds would remain classified as a major for the duration of the assignment. [Exhibit K]. The letter also stated that, pursuant to the Sheriff Command Pay Ordinance, DRMC § 18-114, Deeds would receive a 9.5% pay increase for the duration of his assignment. The letter stated "the

provisions of Career Service Rule 9-40, except for pay, will also apply to this assignment." [Exhibit K].

Wilson made Deeds' acting chief assignment effective August 29, 2010. In the same notice, Wilson promoted Captain Michael Than to acting Major, Sergeant Paul Oliva to acting Captain, and Deputy Steven Zarnow to acting Sergeant. [Exhibit I]. All three of those assignments were made from expired certification lists. By contrast, Wilson's ignored an existing certification list in his appointment of acting Chief. [Anderson testimony; Wilson cross-exam]. The notice of all four appointments stated the assignments were temporary. [Exhibit I]. Oliva, Than, and Zarnow were first on each of their respective certified lists for promotion. [Anderson testimony].

#### **IV. ANALYSIS**

##### **A. Burden of Proof**

The Appellants bear the burden of proving, by a preponderance of the evidence, that the specified Agency actions violated Career Service Rules, the City Charter, ordinances relating to the Career Service, executive orders, or written agency policies. The Appellants also bear the burden to prove the specified actions negatively affected their pay, benefits, or status. CSR 19-10 A. 2. b. i.

##### **B. Appellants' Claims**

###### **1. Whether Wilson violated CSR 19-10 A. 2.b. i. by denying acting pay to Anderson from June 1, 2010 to August 29, 2010.**

Anderson alleged Wilson's failure to compensate him acting chief's pay for the period from June 1 to August 29, 2010, violated DRMC §18-114, which provides, in pertinent part:

[A] deputy sheriff major who... is temporarily assigned to act as a deputy sheriff division chief shall be compensated at the pay rate of deputy sheriff division chief, in lieu of the salary of deputy sheriff major, for such time assigned to act as a deputy sheriff division chief. In...such case, the applicable pay rate in the higher rank shall be ... at least a nine and one-half (9.5) percent increase above the individual's existing pay rate...

Anderson contends he became the *de facto* acting Division Chief of TSP between June 1, 2010 and August 29, 2010, when Diggins told him to run the TSP division and to call him only "if anything big happens."

The Agency replied Anderson was not the acting Division Chief of TSP for that period, because Wilson explicitly delegated that authority to Diggins. Wilson also stated had he known about the re-delegation of authority from Diggins to Anderson, he would have required Diggins to seek his approval before appointing Anderson to Acting Division Chief over TSP. Wilson conceded, however, that Diggins could have asked Anderson to serve as Acting Division Chief without his (Wilson's) knowledge. [Exhibit J; Wilson testimony].

Wilson also testified it would have been unusual for Diggins to delegate his authority over TSP without being absent. However, the preponderance of the evidence made it clear Diggins was effectively absent, since he: did not move his office to TSP; used the office only once; only met with Major Anderson three times in thirteen weeks; and, most importantly, told Anderson to run the division. Notably, the Agency did not present Diggins to refute Anderson's contentions that Diggins told him to run the division, or that Diggins was effectively absent from the TSP Division between June and the end of August 2010. No rule prevents the re-delegation of authority, and Wilson acknowledged Diggins could have done so. Accordingly, Anderson was "temporarily assigned to act as a deputy sheriff division chief" pursuant to DRMC 18-114, and performed the supervisory duties normally performed by the Division Chief of TSP. Anderson established that he effectively ran the TSP Division.

§ 18-114 also requires a major to work a minimum of eight hours in an acting chief capacity in order to earn acting chief pay. Anderson met this requirement when he assuming acting chief responsibilities for over three months. Based upon Diggins' effective absence between June 1, 2010 and August 29, 2010, Diggins' re-delegation of duties to Anderson, and Anderson's effectively running of the TSP Division, Anderson was entitled to acting pay under DRMC §18-114.

Finally, Wilson's failure to award Anderson acting pay had a negative impact on Anderson's pay for the period from June 1 to August 29, 2010. Thus, Anderson proved the Agency violated a city ordinance and the effect of the violation had a negative impact on his pay, both in violation of CSR 19-10 A. 2. b. i.

## **2. Whether Wilson violated CSR 19-10 A.2.b.(i) in appointing Deeds to the acting Division Chief position.**

The Appellants bear the burden to prove, by preponderant evidence, whether Wilson's action in appointing Deeds to the acting Division Chief position violated some other Career Service Rule, City of Denver Charter provision, executive order, or Agency policy, and, if so, whether such violation negatively

affected either Appellant's pay, benefits, or status, as they asserted in their grievances. CSR 19-20 A. 2. b. i. The Appellants claimed Wilson's promotion of Deeds to acting Chief violated the following Career Service Rules pertaining to the process for creating a certified promotional list: CSR 3-41, 3-5D, 3-15, 3-16, 3-20, 3-21, 3-22, 3-30, 3-32, and 3-40. They also cited the City's Charter § 9.1.1 regarding the Career Service Board's responsibility to maintain a merit-based personnel system.

**a. whether Wilson's decision to promote Deeds to Acting Division Chief, without a CSA-certified list of eligible candidates, violated CSR 3-41.**

CSR 3-41 provides, in pertinent part:

Appointing authorities can only [sic] fill vacant Career Service positions with eligible candidates who have been certified by the CSA...

Wilson's contention, that his authority to appoint Deeds temporarily into an acting chief position derives from CSR 9-40 rather than CSR 3-41, is without merit. None of CSR 9 applies to the uniformed personnel in the Agency. "None of the provisions of this Rule 9 shall apply to employees who hold positions in classifications in the Undersheriff pay schedules." [CSR 9-10 C; see also Garritt testimony]. Nonetheless, in the absence of the applicability of Rule 9, a Sheriff's Department director is not constrained in the process he chooses to appoint an acting uniformed personnel, nor is he constrained in the duration of such acting appointments. CSR 3-41 applies only to new appointments and permanent promotions. [Garritt testimony; CSR 3 Purpose Statement]. Thus, no violation was proven under this rule.

The Agency proved Wilson was empowered to make a temporary appointment into an acting position under DRMC section 18-114, and the Agency also proved CSR 3-41 does not apply to acting positions in the Agency. Since, Wilson was not obligated to follow the certification process for acting positions, he did not violate CSR 3-41 when he chose to make an acting appoint of Deeds and not Anderson or Connors.

**b. Whether Wilson's decision to promote Deeds to Acting Division Chief violated CSR 3-5 D.**

CSR 3-5 D. establishes the authority of the Career Service Board to adopt, administer and enforce rules for candidate hiring examinations. The Appellants claimed Wilson violated this rule "by usurping Career Service Authority's power to recruit, examine and certify candidates for the Chief position." [Appellants' Amended Pre-hearing Statement]. Other

than their conclusory statement, it was not apparent what evidence tended to support this claim, and the Appellants appeared to have abandoned this claim at hearing. ("Ten issues ha[ve] come down to nine issues, ha[ve] come down to two issues... the first issue falls under rule 3-41... [Appellants' closing argument]). The Appellants failed to meet their burden of proof with respect to this claim.

**c. Whether Wilson's decision to promote Deeds to Acting Division Chief violated CSR 3-15, or CSR 3-16.**

CSR 3-15 and 3-16 state the CSA is responsible for recruiting, examination, certification and other services related to the selection process. Agencies are not authorized to administer pre-employment testing except as specifically delegated by the CSA.

Anderson and Connors contend Wilson violated these Rules because they grant exclusive authority to the CSA for recruiting, examining, and certifying applicants for a position, and CSA did not delegate any of these rights to Wilson. The Career Service Rules, however, do not dictate how the appointing authority assigns acting duties. [Garritt Testimony; CSR 3 Purpose Statement]. Instead, the power of the appointing authority to select an employee to fill an acting position in the Sheriff's Department derives from DRMC §18-114. [Garritt testimony]. The CSA recruiting rules apply only to those who are hired from outside the City, or who move from one position into another. [Garritt Testimony; CSR § 3-41], whereas an acting employee retains his former classification, but is temporarily assigned the duties of a higher classification. Further, unlike temporary appointments under CSR 9, DRMC §18-114 does not limit the duration of an acting appointment. For these reasons, the Appellants failed to prove, by a preponderance of the evidence, that Wilson violated this rule in appointing Deeds as acting Chief of TSP.

**e-h. Whether Wilson's decision to promote Deeds to Acting Division Chief violated CSR 3-20 through 3-22; CSR 3-30 A. or B., or CSR 3-32.**

CSR 3-20 through 3-22 govern the notice provisions for the CSA recruitment process, including posting job opportunities. CSR 3-30 governs CSA's authority to conduct and interpret the examination process. The Appellants allege Wilson violated these Rules because he did not post the job opportunity for the Acting Director position as required by this Rule, but instead conducted his own testing process. CSR 3-32 sets forth CSA authority to disqualify candidates who do not meet minimum qualifications, including education requirements. As stated above, the CSA recruiting, testing, and qualification rules did not apply to Wilson's

assignment of acting duties. Therefore, no violation occurred under these rules.

**i. Whether Wilson's decision to promote Deeds to Acting Division Chief violated City Charter 9.1.1.**

This charter provision states, in pertinent part, "[t]he [Career Service] Board shall, pursuant to its own rulemaking procedures, adopt, administer and enforce rules necessary to foster and maintain a merit-based personnel system... All appointments and promotions of employees in the Career Service shall be made solely on the basis of merit and ability." Anderson claimed only the Board, and not Wilson, is empowered to adopt, administer and enforce the merit system of employment. The Agency's interpretation, that the merit system rules apply only to new hires or to promotions, [Garritt testimony], was not rebutted by the Appellants. The Agency's position is supported by the Career Service Rules, which serve to enforce the Charter provisions. For example, "the purpose of the CSA selection process is to provide...agencies with the best qualified employees... identifying those with the greatest merit... **for hire or promotion.** [CSR 3 Purpose Statement (emphasis added)]. In addition, DRMC §18-114 grants authority to the Agency Director to assign uniformed personnel to an acting position, while the Career Service Rules do not dictate how the appointing authority assigns acting duties. [Garritt testimony]. For these reasons, no violation is found under Denver Charter § 9.1.1. in Wilson's appointment of Deeds to an acting chief assignment. Consequently I need not address the second element of proof - whether such assignment had a negative impact on the pay, benefits or status of either Appellant.

**V. CONCLUSIONS**

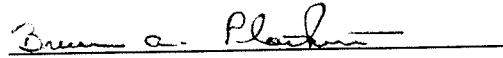
It was inconsistent and troubling that Wilson filled three out of four acting positions (Major, Captain, Sergeant) by choosing the highest-ranked candidate from expired certified promotional lists for those assignments, while, at the same time, he declined to appoint the acting Division Chief from an existing, expired promotional list for that position. An apparent gap between the Career Service Rules, City Charter, and City Ordinances permit complete discretion to a director of the Sheriff's Department to choose acting uniformed personnel, without regard for either merit or time constraints which are required of all other Career Service employees. [City Charter 9.1.1.; CSR 3 Purpose Statement; CSR 9-40; DRMC 18-114].

## VI. ORDERS

A. The Agency action denying Major Anderson acting pay is REVERSED. Anderson shall be paid acting chief pay, pursuant to D.R.M.C. section 18-114, for the period from and including June 1, 2010, through August 28, 2010.

B. The Agency actions appointing Major Deeds to acting division chief, while denying that appointment to either Major Anderson or Major Connors, is AFFIRMED.

DONE December 22, 2010.

  
Bruce A. Plotkin  
Career Service Hearing Officer

### NOTICE OF RIGHT TO FILE PETITION FOR REVIEW

You may petition the Career Service Board to review this DECISION, in accordance with the requirements of CSR 19-60 through 19-80, within fifteen calendar days after the date this order is delivered as stated in the attached certificate of delivery. **Please note the 15-day deadline begins from the date sent from the Hearings Office, not the date you receive it.** The Career Service Rules are available as a hyperlink at <http://www.denvergov.org/jobs/PublicNoticesandAnnouncements/CareerServiceAuthorityRuleRevisions/tabid/433593/Default.aspx>

#### **All petitions for review must be filed with the:**

Career Service Board  
c/o CSA Personnel Director's Office  
201 W. Colfax Avenue, Dept. 412, 4<sup>th</sup> Floor  
Denver, CO 80202  
EMAIL: [Leon.Duran@denvergov.org](mailto:Leon.Duran@denvergov.org)

AND

Career Service Hearing Office  
201 W. Colfax, 1<sup>st</sup> Floor  
Denver, CO 80202  
FAX: 720-913-5995  
EMAIL: [CSAHearings@denvergov.org](mailto:CSAHearings@denvergov.org).

AND

Opposing parties or their representatives, if any.