

CAREER SERVICE BOARD, CITY AND COUNTY OF DENVER, STATE OF COLORADO

Appeal No. 129-08 A.

FINDINGS AND ORDER, RE: REMAND

IN THE MATTER OF THE APPEAL OF:

DANELLE CHAVEZ,

Appellant/Petitioner,

vs.

DENVER SHERIFF'S DEPARTMENT, DEPARTMENT OF SAFETY, and the City and
County of Denver,

Agency/Respondent.

This matter is before the Career Service Board on Appellant's Petition for Review and Motion to Strike Section II of the Agency's Answer Brief. Having reviewed and considered the full record before it, the Board **GRANTS** Petitioner's Motion to Strike, **REVERSES** the Hearing Officer's Decision of February 24, 2009, and **REMANDS** for further findings.

I. FACTUAL BACKGROUND

Appellant has been employed with the Agency as a deputy sheriff for nine years. On June 6, 2007, Appellant had a minor accident while attempting to pull out of a parking space at a bar in Adams County. After a series of roadside sobriety tests, she was given a breathalyzer test which showed a blood alcohol content of .058. She was issued a summons for DWAI, and immediately notified the Agency that she had been charged with this traffic offense. In January 2008, Appellant went to trial and was found not guilty of DWAI.

Nevertheless, the Agency decided to discipline Appellant for the June 6th incident. On November 12, 2008, Appellant received a five day suspension for violation of CSR 16-60 P. (being charged with or convicted of a crime); CSR 16-60 L. (failure to observe departmental regulations)¹, and CSR 16-60 Z. (conduct prejudicial). The Hearing Officer affirmed the discipline based only on a violation of CSR 16-60 L.

¹ Sheriff's Department Regulation 300.11 prohibits deputy sheriffs from being "involved in activities involving violations of the law."

II. FINDINGS

While it is rare for opposing parties to agree on any significant issues on appeal, here, both parties characterize the Hearing Officer's decision as "contradictory." Opening Brief, p. 6; Answer Brief, p.5. Both parties assert that this case has policy considerations that will affect other cases throughout the City, and the Board can see that it has that potential. This appeal involves not only the interplay between departmental rules and career service rules covering the same subject matter, but also the methodology and factors to be considered when discipline is contemplated for off-duty violations of law.

In upholding the disciplinary action under CSR 16-60 L, the Hearing Officer found that Appellant's conduct violated Department Regulation 300.11, which prohibits deputies from engaging in unlawful conduct:

The uncontested facts proven at hearing support a finding that Appellant took actions that were in violation of two laws: careless driving and DWAI.

Decision, p. 4.

Conversely, the Hearing Officer found that the same conduct did not violate CSR 16-60 P., which authorizes City agencies to impose discipline when an employee has been charged with or convicted of a crime. The Hearing Officer's conclusion regarding this rule was premised on her finding that the Agency failed to comply with the guidelines of CSR 16-61 prior to initiating pre-disciplinary procedures. Decision, p. 5.

The Agency spends a good portion of its brief arguing that because it conducted the analysis required by Rule 16-61 prior to imposing discipline, the Hearing Officer erred in finding that Appellant's conduct did not violate CSR 16-60 P. Answer Brief, Section II., pp. 7- 16. Although the Agency describes its argument as a request for clarification, the Board agrees with Appellant that this portion of the Hearing Officer's decision is not properly before us on appeal. CSR 19-63 permits a party to file a cross-appeal to the Board, and since no cross-appeal was filed by the Agency, we cannot consider the arguments raised in Section II of its brief.

On the other hand, Appellant contends that whenever a City employee is disciplined for a violation of law, the analysis required by CSR 16-61 should apply regardless of whether the discipline is imposed under CSR 16-60 P. or under a departmental rule. The Board agrees. Although Regulation 300.11 and CSR 16-60 P. use slightly different language, they both address the same subject matter and in this situation the requirements of the career service rules must supersede departmental rules on the same subject. To find otherwise would effectively eliminate the safeguards given to City employees through CSR 16-61 by permitting agencies to impose discipline for law violations under their own departmental policies instead of CSR 16-60 P. As Appellant suggests, CSR 16-60 L. would become an unintended loophole around CSR 16-61. For these reasons, we find that the requirements of 16-61 apply equally to disciplinary actions for law violations brought under either CSR 16-60 L. or CSR 16-60 P.

On remand, the Hearing Officer must address the requirements of CSR 16-61 as a prerequisite to determining whether Appellant's conduct violated CSR 16-60 L., and must make findings accordingly.

III. ORDER

IT IS THEREFORE ORDERED that Appellant's Motion to Strike is **GRANTED**, the Decision of the Hearing Officer dated February 24, 2009, is **REVERSED**, and this matter is **REMANDED** for further findings as outlined above.

SO ORDERED by the Board on July 16, 2009, and documented this 29th day of July, 2009.

BY THE BOARD:



Luis Toro, Co-Chair

Board Members Concurring:
Tom Bonner
Nita Henry
Felicity O'Herron
Patti Klinge

CERTIFICATE OF DELIVERY

I certify that I delivered a copy of the foregoing **FINDINGS AND ORDER, RE: REMAND** on July 30, 2009, as indicated below:

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