

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

Appeal No. 07-06

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**DECISION**

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IN THE MATTER OF THE APPEAL OF:

**JEROME GONZALES,**  
Appellant,

vs.

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

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The hearing in this appeal was held on March 29, 2006 before Hearing Officer Valerie McNaughton. Appellant was present and represented by Eric James, Esq. The Agency was represented by Assistant City Attorney Joseph A. DiGregorio. Captain Michael Horner served as the Agency's advisory witness. Having considered the evidence and arguments of the parties, the following findings of fact, conclusions of law and order are entered herein.

I. INTRODUCTION

Appellant Jerome Gonzales is a Deputy Sheriff with the Denver Sheriff's Department within the Department of Safety (Agency). Appellant appeals his thirty-day suspension which was issued on January 19, 2006. Appellant stipulated to the admissibility of Agency's Exhibits 1 – 13, which were then admitted into evidence. During the submission of evidence, Exhibit 14 was admitted without objection.

The issues presented herein are as follows:

- 1) Did the Agency establish that Appellant violated the cited section of the Career Service Rules (CSR), and
- 2) Was the thirty-day suspension justified under the Career Service Rules governing discipline, in light of the absence of previous discipline?

## II. FINDINGS OF FACT

The Agency suspended Appellant based on its assertion that he wrote unprofessional and intimidating responses on two inmate grievances, and delivered them to the inmates without processing the grievances. At the commencement of the hearing, Appellant stipulated that he wrote the responses, and that this conduct violated three departmental policies. This appeal asserts that the suspension was improper, not supported by credible evidence, without basis or just cause, and in violation of the Career Service Rules. The appeal also alleges that the discipline was not reasonably related to the seriousness of the offense, fails to consider his lack of previous discipline, and is not progressive in nature, in violation of CSR §§ 16-10 and 16-20. At hearing, after entering into the above stipulation, Appellant argued only that the discipline was too severe for the nature of the misconduct given Appellant's lack of prior discipline.

Appellant is a Deputy Sheriff who has worked at the Denver County Jail for eight years. He is the Building Officer for Building 8, and as such is responsible for the smooth operation of the facility, which houses prisoners from the Colorado Department of Corrections and others facing serious felony charges. By means of the inmate grievance process, inmates may bring any matter affecting their confinement to the attention of command staff by first requesting a kite, which is the form used to obtain the grievance form, and then giving the completed grievance form to an officer.

The grievance is a multi-page form containing a pink, yellow, and white copy. The officer who receives a grievance signs and dates it, and returns the pink copy to the inmate. The white and yellow copies are sent to the Operations Office's inbox for log-in and distribution. Once logged in, a grievance is then placed in a locked box in the jail corridor, where only officers may retrieve them. The yellow copy is returned to the inmate through inmate mail after it is answered by an officer or supervisor. The white copy is maintained by the administration.

Once a grievance is delivered by the receiving officer to the Operations Section, it is referred to the officer or official most likely to have knowledge of the circumstances of the subject matter raised. Grievances of minor issues may be resolved immediately by an officer. Grievances that request monetary damages and/or make claims of unsafe or unconstitutional jail conditions must be reviewed by the Civil Liabilities Bureau and Internal Affairs. The grievance system is a valuable tool used to bring problems in the operation of the jail to the attention of jail administration.

Appellant does not dispute the information produced as a part of the Internal Affairs investigation into these incidents. [Exh. 8.] Therein, inmate Troy Boh stated that on August 14, 2005, he gave Deputy Kurt Blum his grievance regarding the jail's failure to give him a mattress for his cell bunk. At 1:45 that day, Appellant handed Mr. Boh the yellow copy of the grievance with an offensive but unsigned statement written in the space for the supervisor's or officer's answer. Mr. Boh gave the grievance in that form to Sergeant Alonzo Butler during an August 17<sup>th</sup> meeting of Inmate Council, a group of inmate representatives and jail staff which discusses and attempts to resolve inmate

concerns. Sgt. Butler forwarded the matter to Internal Affairs for investigation. [Exh. 8, p. 1.] Thereafter, Mr. Boh sent a copy of the unsigned response to Denver Mayor John Hickenlooper, along with a copy of the response made to inmate Robert Wardell's grievance. [Exh. 8, pp. 17 – 18.]

Appellant stipulated that he added the following comments to Mr. Boh's grievance before returning it to him:

Your "fuck up" on the streets put you in the predicament you're in now. Just because you're a writ from D.O.C. does NOT allow you special housing in building 22. Deal with your assigned housing and quit bitching about your shoulder. You should be grateful that you're still NOT sleeping on metal. Your "selfish" acts on the outside are finally haunting you. FUCK you and this grievance, ASSHOLE!

[Exh. 2.]

The second inmate, Mr. Wardell, complained of "unconstitutional conditions of confinement" and disparity in the treatment of federal detainees held in the Federal Detention Facility and those held in the Denver County Jail. [Exh. 3.] Mr. Wardell told the investigator that he handed his grievance to Deputy Martin Hernandez on August 14, 2005. [Exh. 8, p. 2.] When he awoke on August 16<sup>th</sup>, the grievance was on the floor of his cell, with the following written in the answer section:

You know what you ignorant IDIOT FUCK. You are NOT I fuckin repeat NOT on a vacation in the Bahamas. You're in "FUCKIN JAIL". You should have used your intelligence on the outside as you are in writing this shit to the officers. Did you have as much compassion when you committed your felony crime. NO. So deal with jail and accept the consequences. "DUMB FUCK." P.S/ If you have Bond then Bond OUT if NOT get FUCKED ASSHOLE.

[Exh. 3.]

The above response to Mr. Wardell's grievance was sent to Mayor Hickenlooper by Barbara Gill, a paralegal and member of Colorado Cure who interviewed Mr. Wardell in jail. [Exh 11.]

During his interview at Internal Affairs, Appellant stated that an inmate serving as tier porter gave Mr. Wardell's grievance to him, and he wrote the above responses on it. Appellant then gave it back to Mr. Wardell and informed him that he was supposed to go through the kite system. The inmate responded by swearing at him. [Exh. 8, pp. 8 – 11.]

At hearing, Appellant testified that he assumed both grievances were written by Mr. Wardell, with whom he had had an earlier dispute. He stated the grievances were rolled up tightly together, and all three pages of the multi-page forms were intact. Appellant admitted he wrote the above statements in the answer sections, and then he woke up Mr. Wardell in his cell and gave him back the grievance with Appellant's answer written on it.

Appellant testified that he wrote the statements on the grievances because he was upset the inmate did not use the correct procedure to obtain the grievance form. He believed Mr. Wardell's complaints about conditions at the jail were directed at him as building officer, and that those complaints were encouraging other inmates "to team with him to cause a ruckus against myself." Finally, Appellant stated that Mr. Wardell had insulted the jail's nurse by his complaints about his medication.

The Wardell grievance came to Michael Horner, Captain of Internal Affairs and Civil Liabilities Bureau, via both the Mayor's Office and Inmate Council, and from there was referred by the Division Chief to Internal Affairs. Because of its allegations of unconstitutional conditions at the jail and monetary damages, Capt. Horner also reviewed it for potential civil liability consequences. Capt. Horner reviewed the Internal Investigations Case Summary and its supporting documents, and authored the disciplinary letter at issue.

Capt. Horner testified that under the established grievance procedure, a tier porter would not have access to an inmate grievance once it is received by an officer, as were both these grievances. [Exhs. 2, 3.] He explained that Appellant was on duty as Building Officer on Aug. 14<sup>th</sup>, and therefore had access to the white and yellow copies of the grievances in the Operations office, and the ultimate responsibility for processing them. [Exh. 6.]

At the predisciplinary meeting, Appellant admitted writing the responses, and explained his intent was to be sarcastic to the inmate, who was disrespectful and got the better of him. He apologized for any embarrassment to the department. The recommendation of the command staff at the meeting was forwarded to Manager of Safety Alvin J. LaCabe for decision.

Appellant stipulated that his actions violated the following departmental rules:

1. Rule 300.10 Deputy Sheriffs and employees shall not indulge in immoral, indecent or disorderly conduct that would impair their orderly performance of duties or cause the public to lose confidence in the Department.
2. Rule 300.19 Deputy Sheriffs and employees shall not violate any lawful rule, duty, procedure or order.
3. Rule 300.20 Deputy Sheriffs and employees shall not indulge in any conduct that is contrary to Career Service Authority rules and regulations.

Manager of Safety Alvin J. LaCabe testified that he made the decision to suspend Appellant for thirty days after reviewing the entire investigative and disciplinary file, including video and audio recordings of witness and Appellant's interviews, as well as the department's mission statement and the handbook for the inmate grievance procedure.

Mr. LaCabe concluded that Appellant's actions were grossly negligent in violation of CSR § 16-50 A. 1) based upon his analysis that the conduct intentionally humiliated the inmates, in contravention of his primary duty to treat inmates with respect as a deputy sheriff entrusted with the care and control of inmates. He determined that the conduct was in direct violation of the Department's mission statement, which requires employees to act with honesty, respect, judgment, sensitivity, integrity, accountability, and professionalism, among other qualities. [Exh. 14.] Mr. LaCabe was influenced by the substance of Appellant's response to the grievances, by Appellant's actions in preventing the grievances from review and resolution, and by Appellant's failure to appreciate the seriousness of his actions and its effect on the system and the department. Mr. LaCabe found that Appellant's actions denied the inmates the benefit of the grievance process, and that they would have resulted in the withholding of information from the command officers if the grievances had not later been located. Mr. LaCabe also took into consideration the harm done to the inmates and to the grievance process itself, as well as the damage inflicted on the reputation of the department by virtue of the publication of Appellant's responses to the Mayor, the Governor of Colorado, and the Colorado Department of Corrections.

Based upon the same findings, Mr. LaCabe also determined that Appellant had failed to carry out departmental and city directives and orders in violation of Department Rule 300.21, and had humiliated and intimidated prisoners in violation of Rules 400.4 and 400.5. After confirming that Appellant had no previous disciplinary history, Mr. LaCabe decided that a thirty-day suspension would reflect the seriousness of the misconduct, set the correct standard for acceptable conduct, and correct the behavior.

### III. ANALYSIS

In this de novo hearing on the appropriateness of the suspension, the Agency has the burden to show by a preponderance of the evidence that Appellant violated the disciplinary rules as alleged, and that the discipline was within the range of discipline that can be imposed under these circumstances. Turner v. Rossmiller, 535 P.2d 751 (Colo. App. 1975.); In re Gustern, CSA 128-02, 20 (12/23/02).

The inmate grievance process is the sole method available at the jail to address individual prisoner concerns. I find that Appellant intercepted the two grievances by removing them from the Operations Office, and hand-delivered to Mr. Boh the yellow copy containing his unsigned personal response. He dropped the other response into Mr. Wardell's cell before the latter was awake. The remaining white copies were to be filed with jail administration for processing. Instead, Appellant discarded them, and

thereby took action to prevent them from being brought to the attention of jail administrators for resolution. Appellant stipulated that his actions constituted "immoral, indecent or disorderly conduct that would impair [the] orderly performance of duties or cause the public to lose confidence in the Department," and violated departmental and Career Service rules. Rule 300.10, 300.19 and 300.20; CSR § 16-51 A. 5). Appellant disputes that the actions were also grossly negligent, careless, and a violation of departmental rules 300.21, 400.4 and 400.5.

A. Violation of Career Service Disciplinary Rules

The Agency bears the burden to prove the remaining rules violations by a preponderance of the evidence. In re Roberts, CSA 179-04, 3 (6/29/05).

i. CSR § 16-50 A. 1), Gross negligence or willful neglect of duty

An employee is grossly negligent when his failure to perform a specified duty is obviously unreasonable or inappropriate. In re Roberts, CSA § 179-04, 3 (6/29/05). Here, Appellant admitted that he added his own responses to the two grievances given to him to process, and gave the grievances back to Mr. Wardell without processing them, as he was required to do. That action is contrary to the very essence of Appellant's duties as a deputy sheriff, and is destructive of the trust relationship that incarceration creates between a prisoner and sheriff. His diversion of the two grievances was intended to interfere with the inmates' opportunity to have their concerns about prison conditions heard. If the grievances had not been located and processed, jail management would not have learned of those concerns, one of which raised issues of civil liability for the city. Appellant's actions therefore constitute gross neglect in the performance of his duty to process inmate grievances.

The Agency also asserts that Appellant's actions violated the duties contained in the Denver Sheriff Department's mission statement, which requires a deputy sheriff to govern his official actions by the guiding principles of honesty, respect, fairness, openness, teamwork, judgment, sensitivity, personal leadership, integrity, accountability and professionalism. [Exh. 14.] The Agency proved that Appellant failed in his primary duty to provide respectful and fair treatment to the inmates under his care and control. Appellant's actions demonstrated a conscious disregard for the administrative due process rights of inmates which are at the heart of the mission of the Denver Sheriff's Department. Appellant does not deny he was under a duty to conform his conduct to the guiding principles, or that his actions violated those principles. The evidence demonstrates that Appellant failed to display respect, fairness, openness, judgment, sensitivity, integrity, accountability and professionalism, and was thus grossly negligent in the performance of his duties.

ii. CSR § 16-51 A. 5), Failure to observe departmental regulations

Appellant stipulated to his violation of this rule by virtue of his infraction of the first three departmental rules listed in the disciplinary letter. However, Appellant

disputes that his actions violated the departmental rules requiring him to obey orders or procedures, and avoid the humiliation and intimidation of prisoners. [Departmental Rules 300.21, 400.4, 400.5.]

The Sheriff's Department publishes its mission statement to guide the actions of employees entrusted with the care and control of prisoners. The first mission is "[t]o serve the citizens of Denver by performing our duties with the utmost respect, dignity and professionalism." The department's stated vision is to strive to carry out our duties with respect for the values and diversity of the citizens we serve." The guiding principles include "[t]reating others as we would want to be treated", and "[m]aintaining self-discipline, control and self-restraint." [Exh. 14.]

The department's rules require employees to obey all directives and orders. [Exh. 12, Rule 300.21.] Appellant has stipulated that he violated Rules 300.10, 300.19, and 300.20. Appellant has therefore failed to obey departmental rules, in violation of Rule 300.21. In addition, the language Appellant employed in his responses to the inmate grievances was manifestly intended to humiliate and embarrass them, in violation of Rules 400.4 and 400.5. The Agency has proven that Appellant violated the three additional departmental rules, in violation of CSR § 16-51 A. 5).

iii. CSR § 16-51 A. 6), Carelessness in performance of duties and responsibilities

The facts as stipulated and proven establish that Appellant acted out of anger with an intent to humiliate the inmates. This level of intent is inconsistent with a finding of carelessness. The Agency has thus not proven that Appellant violated this rule.

B. Appropriateness of Penalty

The final issue is whether the Agency's imposition of a thirty-day suspension was in conformity with the Career Service Rules regarding progressive discipline. CSR §§ 16-10, 16-20. The Agency must establish by a preponderance of the evidence that the penalty imposed was reasonably related to the seriousness of the offense. In re Katros, CSA 129-04, 6 (3/16/05).

In determining the appropriate penalty, Mr. LaCabe considered a number of factors. He first concluded that the nature of the conduct was egregious, both because it subverted the extremely important inmate grievance process, and because of the abusive language addressed to the inmates in this volatile high security setting. Next, Mr. LaCabe found that it caused serious harm to the inmates, the inmate grievance process, and to the reputation of the department through their publication to Inmate Council and the offices of the Mayor and Governor.

In addition, after reviewing the investigative and disciplinary files including interviews, Mr. LaCabe determined that Appellant had not been honest in his responses during the investigation. Appellant stated that an inmate tier porter gave him both

grievances. However, the grievance process does not allow an inmate access to a grievance after it had been signed as received by an officer. Both inmates said they gave their grievances to deputies, and both grievances were in fact signed by deputies in acknowledgement of receipt. Appellant also stated he made the comments because of problems he'd had with inmate Wardell, and out of frustration that he had not used the kite system. Mr. LaCabe suspected that those reasons were later fabrications, since neither grievance response referred to those issues. I reach the same conclusion, since Appellant would not have known whether a kite preceded the grievance unless he delivered it to Mr. Wardell without a kite. On the contrary, he testified that he received the grievance from another inmate.

Finally, Mr. LaCabe was influenced by Appellant's apparent lack of appreciation for the seriousness of the offense and the harm it had caused. Appellant conceded only that his actions were "perhaps unprofessional", but attempted to justify them by treatment he had received from inmates in the past. Since it is a deputy's duty to maintain self-control in the face of all inmate conduct, Mr. LaCabe was not persuaded that this mitigated the gravity of the misconduct.

Mr. LaCabe then measured the conduct against the level of appropriate discipline. He first considered termination based on his opinion that the actions were contrary to the essential mission of the Sheriff's Department. He decided that was not appropriate in view of Appellant's eight years with the department without any discipline. He determined that a thirty-day suspension would give Appellant notice of the department's view of his conduct. Capt. Horner testified that Appellant has had no further disciplinary actions, and that Appellant has performed his duties well since the imposition of the discipline.

I find that the Agency's analysis as to the level of punishment was both thorough and thoughtful. The suspension was reasonably related to the gravity of the infraction, and considered both Appellant's work and disciplinary records. The loss of a month's pay was calculated to achieve the goal of serving as a deterrent to similar conduct in the future, and it appears it has succeeded in that goal. The discipline therefore conforms to the standards set forth in CSR §§ 16-10 and 16-20.

ORDER

Based on the foregoing findings of fact and conclusions of law, the Hearing Officer AFFIRMS the Agency action dated January 19, 2006.

Dated this 4<sup>th</sup> day of May, 2006.

  
Hearing Officer for the  
Career Service Board

NOTICE OF RIGHT TO FILE PETITION FOR REVIEW

A party may petition the Career Service Board for review of this decision in accordance with the requirements of CSR § 19-60 et. seq. within fifteen calendar days after the date of mailing of the Hearing Officer's decision, as stated in the certificate of mailing below. The Career Service Rules are available at [www.denvergov.org/csa/career service rules](http://www.denvergov.org/csa/career%20service%20rules).

All petitions for review must be filed by mail, hand delivery, or fax as follows:

BY MAIL OR PERSONAL DELIVERY:

Career Service Board  
c/o Employee Relations  
201 W. Colfax Avenue, Dept. 412  
Denver CO 80202

BY FAX:

(720) 913-5720

*Fax transmissions of more than ten pages will not be accepted.*

**CERTIFICATE OF MAILING**

I hereby certify that I have forwarded a true and correct copy of the foregoing **ORDER** by depositing same in the U.S. mail, postage prepaid, this 4<sup>th</sup> day of May, 2006 to:

Eric James, Esq.  
Hamilton & Faatz, P.C.  
1600 Broadway, Suite 500  
Denver, CO 80202

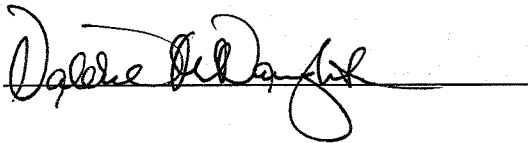
Jerome Gonzales  
19548 E. 39<sup>th</sup> Avenue  
Denver, CO 80249

I further certify that I have forwarded a true and correct copy of the foregoing **ORDER** by depositing it in interoffice mail this 4<sup>th</sup> day of May, 2006, addressed to:

Joseph A. DiGregorio  
Assistant City Attorney  
City Attorney's Office  
Litigation Section

Alvin J. LaCabe, Jr.  
Department of Safety

Fred J. Oliva  
Denver Sheriff Department

A handwritten signature in black ink, appearing to read "Joseph A. DiGregorio", with a long horizontal line extending to the right.