

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

Appeal No. 08-03

FINDINGS AND ORDER

IN THE MATTER OF THE APPEAL OF:

COREY PAZ, Appellant,

Agency: Denver Sheriff's Department, Department of Safety, and the City and County of Denver, a municipal corporation.

Hearing in this matter was held before Michael S. Gallegos, Hearing Officer, on April 29, 2003, in the Career Service Hearings Office, 201 West Colfax, 1st Floor, Denver, Colorado 80202. Appellant, Corey Paz, appeared and was represented by Robert Goodwin, Esq. The Agency was represented by Assistant City Attorney, R. Craig Hess. Sergeant Paul Murphy was the Agency's advisory witness at hearing.

Within these Findings and Order, the Hearing Officer refers to Corey Paz as "Appellant"; the Denver Sheriff's Department as the "Agency"; Deputy Sheriff(s) as "Officer(s)"; Officers with a rank higher than Deputy Sheriff as "ranking Officer(s)"; the Agency's Director, Fred J. Oliva, as the "Director" and the Career Service Rules as "Career Service Rules" or "CSR". The Career Service Rules are cited by section number and are those currently in effect unless otherwise indicated.

For the reasons set for the below, the Agency's 3-day suspension of Appellant, for sleeping on the job, is **AFFIRMED**.

ISSUES FOR HEARING

Whether there is cause to discipline Appellant and whether the degree of discipline is reasonably related to the severity of the offense(s) for which discipline was imposed.

BURDEN OF PROOF

The burden of proof is upon the Agency to show, by a preponderance of the evidence, that there is cause to discipline Appellant and that the degree of discipline is reasonably related to the severity of the offense(s) for which discipline was imposed.

PRELIMINARY MATTERS

On the day of hearing in this matter, Appellant withdrew his claim of discrimination by written motion, granted by the undersigned Hearing Officer.

Appellant's Exhibits A, B, C, E and F were accepted into evidence without objection. Appellant's Exhibits D and G were accepted as rebuttal evidence over the Agency's objection. Appellant's Exhibit H was neither offered nor accepted into evidence. Rather, it was used, at hearing, for demonstrative purposes only. The Agency's Exhibits 1 through 6 were accepted into evidence without objection. The Agency's Exhibit 7 was accepted by the Hearing Officer for the limited purpose of credibility assessment.

FINDINGS OF FACT

Based on the evidence presented at hearing, the Hearing Officer finds the following to be fact:

1. Appellant is an Officer, in career status, assigned to the Denver County Jail (Jail). He has served as a Deputy Sheriff with the Agency since August 1991. By letter dated January 21, 2003, Appellant was notified that he would be suspended for 3 days without pay, including secondary employment, as discipline for sleeping on the job on November 26, 2002. In November 2002, Appellant's work shift was 1:40 a.m. to 12 Noon.

2. At approximately 10:00 a.m. on November 26, 2002, Appellant went to the Jail radio room. At that time, he was an "RFMS" Officer. That is, he was "a relief Officer", not assigned to a specific post. Officers and ranking Officers communicate with each other at the Jail through use of hand-held radios. At 10:00 a.m., there were not enough radios for all Officers on duty to have a radio. Therefore, on November 26, 2002, Appellant did not have a radio with him from 10:00 a.m. until 10:15 a.m. when he relieved Officer Upton at Tier 11B.

3. Sergeant Paul Murphy (Murphy) was assigned as the Corridor 1 Officer on November 26, 2002. Beginning at approximately 10:00 a.m., Murphy observed Sergeant Koonce attempt, for 10 to 15 minutes, to contact Appellant. Murphy later reported, "When the [Appellant] finally reported to the Sergeant's

office he was found to be without a radio making it impossible to contact him. Because of his elusiveness [Appellant] was immediately reassigned to 11B tier."

4. Murphy's characterization of Appellant's inability to be contacted as "elusiveness" together with Murphy's testimony, including that Appellant was unavailable for 30 minutes (rather than 10 to 15 minutes - See paragraphs 2, 3 and 8.), indicate that Murphy had predetermined Appellant was negligent in his duties on November 26, 2002.

5. When another Officer advised Appellant that Murphy wanted to see him (Appellant), Appellant went immediately to see Murphy and was assigned to Tier 11B. A reassignment was required because the Officer assigned to Tier 11B, Officer Upton, went home sick.

6. Tier 11B houses approximately 50 Jail inmates charged or convicted of having committed misdemeanors. Misdemeanors are minor offenses or crimes that are lesser than felony crimes.

7. Appellant's duties at Tier 11B included signing inmates in or out of the dormitory and keeping the area secure as they came and went from the bathroom. Appellant positioned himself behind a desk that was Katy-corner to the two rooms, and the door to the bathroom, that it was his duty to watch. There are two grills or barred doors that do not block an Officer's ability to observe inmates or other Officers as they move into or out of Tier 11B.

8. When Appellant arrived at Tier 11B, there was a radio there. He signed the log book at Tier 11B at 10:15 a. m., "all ok". Appellant sat down, leaned back in the chair and put his feet up on a milk crate that was near the desk.

9. Murphy's duties included completing "rounds" of the housing areas. That is, Murphy checked the log books for inmates checking in or out of dormitories, observed the Officers assigned to each area or tier and confirmed that each of the housing areas was secure. Murphy signed a log book with the times he completed "rounds" at each tier.

10. On November 26, 2002, Murphy signed that he completed "rounds" at Tier 11A at 11:10 a.m., Tier 12 A at 11:11 a.m., Tier 12B at 11:12 a.m., Tier 12C at 11:12 a.m., Tier 11B at 11:15 a.m. and Tier 11C at 11:16 a.m. Unless there was a problem, it took no more than a minute to check that each area was secure, then walk up or down one flight. The fact that "rounds" at both Tier 12B and 12C were signed off as complete at 11:12 a.m., is due to the difference in time indicated on the clocks at each tier.

11. As Murphy came through the first grill on Tier 11B, at approximately 11:13 a.m., he observed Appellant reclined in a chair with his feet up and his

A pre-disciplinary meeting was scheduled for January 9, 2003. At the pre-disciplinary meeting, Appellant again denied sleeping on the job. Murphy did not attend the pre-disciplinary meeting.

19. The Director considered Appellant's past disciplinary history which consists of the following: A 1-day suspension for Sleeping on Duty (04/24/00), a Written Reprimand for Failing to Respond to a Direct Order (06/25/00) and a Written Reprimand for Dishonesty (Misuse of a Diner's Club card 06/25/02).

20. Appellant's misuse of a Diner's Club card, issued through the Agency, was based on his misunderstanding that he could use the credit card for personal items so long as he timely paid off the credit card.

21. The Director determined that Appellant did sleep on duty on November 26, 2002. Additionally, the Director determined that by sleeping on duty at Tier 11B, Appellant not only put himself in danger but also put the entire Jail in danger. Due to the nature and severity of Appellant's conduct, the Director considered a suspension of 5 to 10 days. The Director did not consider termination. Because Appellant had a prior Written Reprimand for sleeping on duty in April 2000, the Director did not consider a Written Reprimand. Rather, the Director imposed a 3-day suspension as in line with progressive discipline and sufficient to correct Appellant's inappropriate behavior.

22. Appellant served his suspension, as indicated in his disciplinary letter, on January 28 through 30, 2003.

DISCUSSION

1. **Authority of the Hearing Officer:** The City Charter and Career Service Rules require the Hearing Officer to determine the facts, by *de novo* hearing, in "[a]ny action of an appointing authority resulting in dismissal, suspension, involuntary demotion...which results in alleged violation of the Career Service Charter Provisions or Ordinance relating to the Career Service, or the Personnel Rules." (City Charter C5.25 (4) and CSR 19-10 b.) A *de novo* hearing is one in which the Hearing Officer makes independent findings of fact, credibility assessments and resolves factual disputes. (See *Turner v. Rossmiller*, 35 Co. App. 329, 532 P.2d 751 (Colo. App.1975).)

2. **Cause for discipline:** Career Service Rules provide, in pertinent part: "The purpose of discipline is to correct inappropriate behavior or performance. The type and severity of discipline depends on the gravity of the infraction. The degree of discipline shall be reasonably related to the seriousness of the offense and take into consideration the employee's past record." (See CSR 16-10.) In this case, it is Appellant's denial versus Murphy's allegation that Appellant was asleep on the job. Although on November 26,

2002, Murphy had predetermined that Appellant was negligent in his duties, even Appellant admits that he did not see Murphy until Murphy was at the second grill. If Appellant had been awake and alert as he should have been, Appellant would have seen Murphy as he entered Tier 11B through the first grill. Therefore, the undersigned Hearing Officer concludes that Appellant was asleep and that the Agency has met its burden to show, by a preponderance of the evidence, that there is cause for discipline.

Appellant's sleeping on the job on November 26, 2002, endangered Appellant himself, other Officers, Jail staff and inmates at the Jail in that it constituted a potential breach of security. It is an Officer's duty to provide security. Sleeping on the job, then, is negligence in the performance of duty and, in and of itself, grounds for dismissal. CSR 16-50 A.1. However, the Director chose not to dismiss Appellant and instead imposed progressive discipline. In April 2000, Appellant received a Written Reprimand for sleeping on the job. Imposing a suspension for a second occurrence is in compliance with Career Service Rules. CSR 16-20. The undersigned Hearing Officer concludes that the level of discipline imposed in this matter, suspension, is reasonably related to the seriousness of the offense, sleeping on the job, in that Appellant's action constituted a potential breach of security and thereby endangered Jail employees and inmates.


CONCLUSIONS OF LAW

1. The Hearing Officer has jurisdiction to make and issue Findings, conclusions and Order in this matter.
2. The Agency has met its burden to show there was cause for discipline and that the level of discipline imposed is reasonably related to the severity of the offense.

ORDER

Therefore, for the reasons stated above, the undersigned Hearing Officer **AFFIRMS** the Agency's 3-day suspension of Appellant for sleeping on the job.

Dated this 11th day of July 2003



Michael S. Gallegos
Hearing Officer for the
Career Service Board.

AMENDED CERTIFICATE OF MAILING

I hereby certify that I have forwarded a true and correct copy of the foregoing **FINDINGS AND ORDER** by depositing same in the United States Mail, postage prepaid, on the 21 day of July 2003, address to:

Corey Paz
1342 Bowman Place
Northglenn, CO 80233

Robert E. Goodwin, Esq.
1343 Delaware St.
Denver, CO 80204

I further certify that I have forwarded a true and correct copy of the foregoing **FINDINGS AND ORDER** by depositing same in interoffice mail, on the 21 day of July 2003, addressed to:

R. Craig Hess, Esq.
Assistance City Attorney

Tracy Howard
Department of Safety

F.J. Oliva
Denver Sheriffs Department

V. Garado