

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

Appeal No. 31-06

FINDINGS AND ORDER

CAREER SERVICE
HEARING OFFICE

AUG 17 2007

IN THE MATTER OF THE APPEAL OF:

RECEIVED

JARED SIMPLEMAN,

Appellant/Petitioner,

vs.

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

Agency/Respondent.

This matter is before the Career Service Board ("Board") on Appellant's Petition for Review. The Board has reviewed and considered the record on appeal¹ and **AFFIRMS** the Hearing Officer's Decision, dated October 20, 2006, on the grounds outlined below.

I. FACTUAL BACKGROUND

On March 12, 2006, Appellant and Deputy Jason Martinez were on duty guarding prisoners in the Denver County jail. Their shift supervisor observed them playing cards while a jail door was left unlocked on the felony unit. In addition, the Agency alleged and proved to the Hearing Officer's satisfaction that Appellant lied to investigators about the incident. Approximately one week earlier, Appellant had just completed a 30 day suspension for sleeping on duty and dishonesty, and Manager LaCabe testified that this factor was, in his opinion, particularly aggravating. (Transcript, 9/13/06, pp. 18-19). The Hearing Officer also found that Appellant had been disciplined every year since his hire in 2003 and Appellant's continued denials of any wrongdoing in two cases involving dishonesty demonstrated a lack of trustworthiness. As a result of the March 12th incident, Appellant's employment with the Denver Sheriff's Department was terminated while Deputy Martinez received a 45 day suspension. The Hearing Officer affirmed the dismissal and this appeal follows.

¹ The only record Appellant designated on appeal was the testimony transcript of Alvin J. LaCabe, Manager of Safety.

II. FINDINGS

Appellant asserts that the Hearing Officer inappropriately made comparisons between his discipline and the discipline imposed on Deputy Martinez and such comparisons involve an erroneous rules interpretation under CSR 19-61 B. He does not, however, set forth any specific career service rules that he believes the Hearing Officer interpreted incorrectly. To the extent Appellant is trying to argue that the Hearing Officer misinterpreted the scope of his authority under the career service rules in general, the Board disagrees.

CSR 19-30 provides as follows:

A. Powers and Duties

The Hearing Officers shall have authority to hear and decide all appeals permitted by this Rule 19; and shall perform the functions necessary to implement and maintain a fair and efficient process for appeals.

Because Appellant was dismissed from his employment, the Hearing Officer had jurisdiction to hear this appeal under CSR 19-10 A., and implicit in this jurisdiction is the authority to hear and decide all evidence relevant to the dismissal, including the nature and severity of the misconduct, prior disciplinary history, issues of credibility, motive, bias or prejudice, and any other evidence relevant to determining whether the dismissal was fair and appropriate. When two employees are involved in the same incident of misconduct but receive different levels of discipline, any similarities or dissimilarities in the employees' circumstances is certainly a relevant factor, along with all the other evidence, to the Hearing Officer's inquiry.²

Further, Appellant's reliance on *In the Matter of the Appeal of John F. Sandoval, Jr.*, CSA No. 33-00 is misplaced; a decision of one of the CSA hearing officers is not binding on the Board. Nevertheless, the decision in *Sandoval* is consistent with the Board's findings here. In *Sandoval*, the agency argued that the appellant's discipline was comparable to discipline imposed on employees who had committed safety violations on **other** occasions in the past. While the Hearing Officer found such a comparison irrelevant, she went on to compare Sandoval's discipline and disciplinary history to those of the other employee involved in the **same** incident of misconduct.

Finally, based on the record presented on appeal, it was Appellant who introduced the issue of Deputy Martinez' discipline as one of his theories of the case, arguing that his dismissal was unfair because, in his opinion, Martinez had a worse disciplinary history. (Transcript, 9/13/06, pp. 18-20). On cross-examination, Appellant's counsel

² Comparing the discipline of employees involved in the same incident of misconduct is not "comparative discipline" as that term is used in the Denver Classified Service and mandated under the Denver City Charter, where an employee's discipline must be consistent with the discipline imposed on other employees who committed similar misconduct on other occasions.

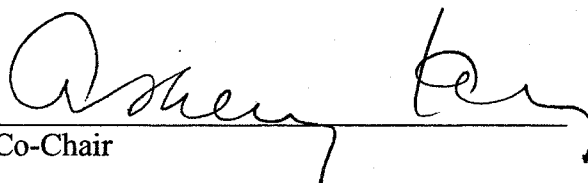
spent a good deal of time asking Manager LaCabe to compare the culpability of each deputy in the March 12th incident (Transcript, 9/13/06, pp. 66-70), and to compare both deputies' respective disciplinary histories, (Transcript, 9/21/06, pp. 3-10, 17-26). The Hearing Officer then responded to Appellant's argument in his decision: "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." Decision, p. 10. The Board notes the irony of Appellant now complaining that the Hearing Officer erred by addressing the very issue he asked the Hearing Officer to address. See, Horton v. Suthers, 43 P.3d 611, 618 (Colo. 2002) (under the invited error doctrine, a party may not complain on appeal of an error that he has invited or injected into the case, but must abide by the consequences of his acts).

III. ORDER

IT IS THEREFORE ORDERED that Appellant's Petition for Review is **DENIED**, and the Hearing Officer's Decision of October 20, 2006, affirming Appellant's dismissal of employment, is **AFFIRMED**.

SO ORDERED by the Board on July 19, 2007, and documented this
2nd day of August, 2007.

BY THE BOARD:


Co-Chair

Board Members Concurring:

Luis Toro
Tom Bonner

CERTIFICATE OF MAILING

I certify that I have mailed a true and correct copy of the foregoing **FINDINGS AND ORDER**, postage prepaid, this 3 day of August, 2007 to:

Reid Elkus, Esq.
Don Sisson, Esq.
1444 Blake Street
Denver, Co 80202

And **VIA INTEROFFICE MAIL** this 3 day of August, 2007:

Joseph A. DiGregorio, Assistant City Attorney
City Attorney's Office, Dept. 1108

Alvin J. LaCabe, Jr., Manager
Department of Safety

William R. Lovinger, Undersheriff
Denver Sheriff's Department

CSA Hearings Office

