

ORDER ON APPELLANT'S DISCOVERY MOTION

IN THE MATTER OF THE APPEAL OF:

RUSSELL STONE, Appellant,

vs.

DEPARTMENT OF LAW, PROSECUTION AND CODE ENFORCEMENT,
and the City and County of Denver, a municipal corporation, Agency.

Appellant has moved for discovery of seven specific items. The Agency has responded to that motion. After a review of the pleadings and exhibits filed in this appeal, the following order is entered:

1. The parties appear to have resolved the first request, which was information about the expert qualifications of proposed witness Amanda Wiley. The Agency has clarified that Ms. Wiley is a fact witness.

2. The Agency stated in its response that it has given Appellant's attorney a copy of exhibits 5 - 7, 10 and 12.

3. The parties are conferring to confirm the contents of the Traffic Trial Notebook which will be tendered as exhibit 4, and will submit a stipulated protective order today.

4. The sole remaining issue is Appellant's request for Agency, Hearing Office and Board decisions concerning discipline imposed for the same or similar violations. Hearing Office and Board decisions are available on denvergov.org/hearings. As to Agency discipline, Appellant asserts that his discipline was inconsistent with that imposed on other employees, and therefore violates due process and the City Charter. The City argues that 1) other employees' discipline is not relevant because individual circumstances and past disciplinary record determine the level of discipline imposed under CSR § 16-20, and 2) the request is not limited in time or scope.

ANALYSIS

"Implicit in [the jurisdiction of the Hearing Office] is the authority to hear and decide all evidence relevant to that dismissal, including a claim that the dismissal was

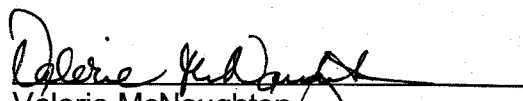
motivated by unlawful discrimination." In re Diaz, CSA 72-06 (CSB 9/20/07). Information is discoverable if it is likely to lead to the production of evidence relevant to an issue in the case. Here, information about discipline imposed in similar cases is relevant to the issues of the seriousness of the offense and the appropriateness of the penalty imposed. The Agency is not precluded from arguing at hearing that specific discipline is not relevant because of dissimilar employee personnel histories.

The Agency correctly objects to the scope of the discovery request. Discovery is intended as a method to seek evidence relevant to a claim or defense. C.R.C.P. Rule 26(b). Information obtained in discovery becomes less relevant on the ultimate fairness of this discipline the farther it is removed from the facts of the present case, including the time frame, supervisor imposing it, nature of violation, and the employee's disciplinary history. Here, discipline by another supervisor outside the time frame covered by the policy at issue would not be persuasive on the appropriateness of this discipline.

Order

The Agency is ordered to produce redacted copies of any Agency disciplinary decision imposed for the same or similar violations by Vincent DiCroce or John D. Poley from August 13, 2002 to the present.

Dated this 20th day of November, 2007.


Valerie McNaughton
Career Service Hearing Office

I hereby certify that a copy of this order was sent on Nov 20, 2007 to the following:

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