CAREER SERVICE BOARD, CITY AND COUNTY OF DENVER,
STATE OF COLORADO
Appeal No. 45-15A

DECISION AND ORDER

IN THE MATTER OF THE APPEAL OF:

DESIREE ARCHULETA,
Respondent-Appellant,

vs.

DEPARTMENT OF SAFETY, DENVER SHERIFF DEPARTMENT,
and the City and County of Denver, a municipal corporation,
Petitioner-Agency.

On July 31, 2014, a murder trial was taking place in Courtroom 4H of the Lindsay Flanagan Courthouse. The families of both the defendant and the murder victim were in attendance. Appellant, Denver Deputy Sheriff Desiree Archuleta was assigned to provide security within the courtroom.

While performing his rounds in the courthouse, Denver Deputy Sheriff Sergeant Phil Swift looked through a window into courtroom 4H. He could not see the Appellant. He entered the courtroom to check on her, but could not immediately locate Appellant. Eventually he found Appellant sitting two rows from the back of the courtroom. He noticed she had a cell phone on one leg and another electronic device on her other leg. Sgt. Swift stood at the door, watching Appellant, waiting for her to notice him. Sgt. Swift, from his position at the courtroom door, could see Appellant apparently scrolling through pictures on her other electronic device. Sgt. Swift also caught the glance of the judge presiding over the trial, evidencing her awareness of Appellant's inattention. Sgt. Swift judged the security situation in the courtroom – murder trial, victim's family present, defendant's family present, inattentive deputy – "as bad as it gets." [1]

After approximately four minutes (Appellant still had not noticed that Sgt. Swift had entered the courtroom), Sgt. Swift went over to Appellant. She was so startled by his presence

---

[1] Surveillance video footage from the courtroom shows Appellant seated in the rear of the courtroom, in public seating, two rows from the back. During this time, the murder trial is going on, with the jury in the jury box, the judge on the bench, a witness on the stand and the defendant seated at counsel table. For most of the time shown on the video footage, Appellant remains seated in the back with her head down.

that she dropped one of her electronic devices. Sgt. Swift told her to put both of the devices away and left the courtroom. He subsequently had Appellant removed from her duties and replaced with another deputy.

The Sheriff Department conducted an investigation into Appellant's conduct in the courtroom. During that investigation, Appellant admitted that she had one cell phone that worked and another that she was using as a day planner, and that she was looking at her calendar. Appellant also admitted to using her phone to visit various websites on the internet.[2]

The Agency determined that Appellant's conduct violated several Career Service Rules as well as certain internal departmental rules.[3] For these rules violations, Appellant was issued a ten-day suspension.

Appellant appealed her suspension to a Hearing Officer. The parties waived an evidentiary hearing and agreed to allow the Hearing Officer to decide the appeal based on briefs and documentary evidence. The Hearing Officer ultimately determined that the Agency had proven all of the alleged rules violations [4] except for the 16-60 Z Conduct Prejudicial charge. The Hearing Officer then, considering Appellant's disciplinary history, contrition, lack of recidivism and lack of aggravating factors, reduced the punishment assessed by the Agency, modifying the ten-day suspension to a written reprimand.

The Agency has appealed the Hearing Officer's modification of the discipline, claiming, pursuant to CSR 19-61(C) the Hearing Officer's decision is of a precedential nature involving policy considerations that may have effect beyond the appeal at hand. We agree.

We perceive this decision as setting new precedent, a precedent which the Board does not adopt because it amounts to bad policy. That precedent appears to be that an employee with a good disciplinary history who shows contrition and does not re-offend[5] is entitled to a

---

[2] All of these facts can be found at page 2 of the Hearing Officer's decision.

[3] Career Service Rules: 16-60 A (Neglect of duties); 16-60 J (Failure to comply with lawful orders/Failure to do assigned work); 16-60 L (Failure to observe written departmental or agency regulations, policies or rules); and 16-60Z (Conduct Prejudicial). Departmental rules alleged to be violated included DSD RR 200.9 (Full Attention to Duties), DSD RR 300.16 (Conduct Prejudicial), DSD RR 300.19.1 (Disobedience of Rules) and D.O. 2710.1E (prohibiting the use of cell phones).

[4] The Hearing Officer also ruled, however, that the Agency had proven that Appellant violated the internal rule (DSD RR 300.16) prohibiting Conduct Prejudicial. The elements of proof for the two charges are not the same.

[5] The inordinate delay between the date of the incident and the imposition of discipline, in this case, some thirteen months, gives the Hearing Officer the opportunity to assess the likelihood of recidivism, an opportunity the Hearing officer would not have had discipline been imposed in a relatively timely fashion. (We do not see why an incident lasting four minutes, which was largely uncontested, took thirteen months to resolve.) Normally, we would feel the need to express the idea that the reasonableness of the imposed discipline is measured at the time the discipline is imposed, not at the time the appeal is decided. But that concept assumes that discipline is imposed somewhat contemporaneously to the commission of the acts of misconduct. That is obviously not the case here. We do not fault the Hearing Officer for looking at Appellant's work record for the period of time between the commission of the acts of misconduct and the imposition of discipline.

written reprimand.[6] While this formula may be appropriate in certain circumstances, it does not work for this case. We believe that what is left out of the disciplinary consideration is a meaningful consideration of the seriousness of the misconduct committed by Appellant. And in this case, even if we were to conclude that the Hearing Officer properly considered the seriousness of the misconduct, we hold that his assessment was in error and that Appellant's misconduct was far more serious than the Hearing Officer considered it to be. The Hearing Officer's improper assessment of the misconduct led to an improper precedent-setting decision and bad policy.

Career Service Rule 16-20 states:

> The purpose of discipline is to correct inappropriate behavior or performance, if possible. The type and severity of discipline depends on the gravity of the offense. The degree of discipline shall be reasonably related to the seriousness of the offense and take into consideration the employee's past record. The appointing authority shall impose the type and amount of discipline he or she believes is needed to correct the situation and achieve the desired behavior or performance.

We note that the Rule speaks to both "the gravity of the offense" and "the seriousness of the offense." The Hearing Officer's decision appears to set an improper precedent, relegating the gravity or seriousness of the offense to an afterthought, or at least a factor which must be subordinated to other discipline factors mentioned in the Rule. We believe it bad policy to not allow the Agency to give the weight it reasonably believes to be due to the seriousness of the misconduct at issue.

In addition, we believe the Hearing officer's decision which appears to impose a written reprimand requirement sets improper precedent in that it abrogates long standing principles and precedents concerning the imposition of discipline. For example, we have consistently held that an Agency's imposed discipline should be upheld if that discipline is within the range of alternatives available to a reasonable and prudent administrator citing *Adkins v. Division of Youth Services, Dept. of Institutions*, 720 P.2d 626, 628 (Colo.App.,1986); *Colorado Dept. of Human Services v. Maggard*, 248 P.3d 708 (Colo. 2011).[7] While the Hearing Officer

---

[6] We observed the same issue in *In Re: Novitch*, No. 49-15A, where the Hearing Officer also reduced a ten-day suspension to a written reprimand on essentially the same grounds; and we were forced to reverse the Hearing Officer.

[7] See, *e.g., In re: Economakos*, No. 28-13A.

acknowledges this precedent, the precedent is essentially ignored when the Decision limits the "range" of discipline to one option – the written reprimand. (To the extent that the Hearing Officer has attempted to follow this precedent, we hold that he erred in his ultimate conclusion that that a ten-day suspension was not reasonable and that it was clearly excessive. We hold that the ten-day suspension was both reasonable and not at all excessive, given the serious nature of the misconduct.)

We have also held and continue to hold that Rule 16-20 vests an Appointing Authority with significant discretion in the imposition of discipline.[8] The Hearing Officer's decision appears to us to remove or at least improperly curtail the Agency's exercise of its discretion to discipline employees. We do not believe a Hearing Officer is permitted to simply substitute his or her judgment for that of the Appointing Authority on the issue of discipline, though it appears to us as that is exactly what has taken place in this case.

Appellant committed a serious act of misconduct which could have jeopardized the safety of those in Courtroom 4H. A ten-day suspension, even allowing for Appellant's contrition, disciplinary history and work record, is neither unreasonable nor excessive. The Hearing Officer's decision modifying the ten-day suspension to a written reprimand is REVERSED. The ten-day suspension is re-instated.

SO ORDERED by the Board on July 7, 2016, and documented this 6th day of October, 2016.

BY THE BOARD:

Chair (or Co-Chair)

Board Members Concurring:

Neil Peck

Derrick Fuller

[8] *Id.*