

**CAREER SERVICE BOARD,
CITY AND COUNTY OF DENVER, COLORADO**
Appeal No. 01-16A

In the Matter of the Appeal of:

ANGELA BARRA,

Petitioner-Appellant,

v.

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

Respondent-Agency.

DECISION AND ORDER

Denver Deputy Sheriff Angela Barra (Appellant) was working at the Downtown Detention Center (DDC) in a housing pod. Her shift ran from 2:30 p.m. to 2:30 a.m. During her shift, she was required to make rounds, that is, she was required to check up on the prisoners in their cells. She was required to make two rounds per hour; a total of twenty-four rounds over the course of her twelve-hour shift. All rounds needed to be logged into a computer system (known as JMS) and, if rounds were not performed or completed, Appellant was required to log the reasons for the failure to make or complete rounds into the JMS system. In addition, if she needed to leave her post for any reason, Appellant was required to notify a co-worker and have someone fill in for her while she was away.

On September 25, 2013, Appellant was assigned to a housing pod and worked under the above-mentioned conditions. The Denver Sheriff Department (Agency) learned, however, that Appellant completed only 14 of her required 24 rounds that work shift. The Agency also determined that Appellant had failed to log in any reasons or justifications for having failed to complete ten rounds. Finally, the Agency determined that on three separate occasions during that shift, Appellant left her post without obtaining relief personnel. For her failure to complete rounds, her failure to log the non-performed or uncompleted rounds, and her failure to obtain relief before vacating her post, Appellant received a ten-day disciplinary suspension from the Agency.

Appellant appealed her suspension to a hearing officer. The Hearing Officer upheld the Agency's imposition of discipline. Appellant has appealed the Hearing Officer's decision to this Board. The Board AFFIRMS the Hearing Officer's decision.

Appellant first claims that the Hearing Officer's determination that she failed to complete ten of her required 24 rounds is erroneous. Based on this record, we find this argument to be utterly frivolous; and if we were possessed with the power to issue Rule 11-type sanctions, we would most certainly exercise that power in response to this argument. The Hearing Officer found that Appellant had admitted, during her pre-disciplinary meeting, that she failed to complete ten out of the required twenty-four rounds.¹ In addition, at hearing, Appellant confessed that she had no evidence to dispute the allegation that she had completed only fourteen of the required twenty-four rounds (R. 630). Further, Appellant admitted that she left her post on three separate occasions without obtaining relief and given that JMS contained no information from Appellant justifying her missed rounds, there can be no genuine dispute that this record contains substantial evidence supporting the Hearing Officer's finding that Appellant failed to document and justify her missed rounds. There is substantial evidence in the record supporting the Hearing Officer's determination that Appellant violated internal Agency (and therefore, Career Service) rules by failing to perform ten of the required twenty-four rounds on her shift, leaving her post without obtaining the required relief, and failing to justify her missed rounds.²

Appellant also complains about the fact that video footage of the first four hours of her shift were not acquired by the Agency as part of its investigation into her misconduct and, therefore, not considered by the Agency's Civilian Review Administrator; and that this fact was not referenced by the Hearing Officer in his decision. A Hearing Officer, however, is not required in his or her decision to mention every piece of evidence admitted, or every line of questioning posed to every witness, and then comment on said evidence. Such a practice would be a galactic waste of time, render written decisions unnecessarily and interminably long, and is not at all required by our rules. The Hearing Officer, of course, is free to consider whatever record evidence he or she believes to be relevant and persuasive to the case and base a decision on that relevant, persuasive evidence.

The obverse side of this coin, obviously, is that The Hearing Officer is also free to reject or not consider evidence which he or she does not find to be relevant or persuasive. In this case, the Hearing Officer's failure to mention missing video footage is immaterial to the question of whether his factual findings are clearly erroneous. Given Appellant's admissions concerning the misconduct, the Hearing Officer's failure to mention, or possibly even consider evidence concerning the missing video, does not change the fact that his actual findings concerning Appellant's misconduct are supported by record evidence, and, therefore, not clearly erroneous.

Appellant further argues that the Hearing Officer's findings concerning Appellant's failure to complete the required rounds are erroneous in that they are in "direct contravention of the evidence."³ But we see no evidence in the record that contravenes the Hearing Officer's findings. Appellant, in her brief, does nothing more than suggest that the JMS system might have been malfunctioning (without

¹ Hearing Officer Decision, p. 2.

² Appellant's argument to the contrary presents a troubling implication. As noted above, the Hearing Officer found, based at least in part on admissions twice made by Appellant, that Appellant failed to complete the required number of rounds. By arguing that these two separate admissions are insufficient to support the Hearing Officer's conclusions, Appellant is, essentially, arguing that her own statements, her own words, are so lacking in reliability, or so lacking in credibility, that they cannot, as a matter of law, support the Hearing Officer's findings which are based on those admissions. If this is, in fact, the case, then Appellant is fortunate, indeed, to still have a job.

³ Appellant's brief, p. 6, bottom paragraph.

proving that it was) and that the four hours of missing video could possibly have shown that Appellant did all of her rounds (without proving that it would have). This argument proves, at best, the Hearing Officer could have engaged in speculation and find alternative facts in her favor. That the Hearing Officer failed or refused to do this does not render his findings clearly erroneous.

Appellant next argues that the Hearing Officer erred in upholding the ten-day suspension because the Agency's Civilian Review Administrator issued discipline to her that was allegedly inconsistent with discipline imposed on other deputies under allegedly similar circumstances. Appellant argues that this amounted to a violation of the terms of the Agency's disciplinary Matrix.

We have stated before and continue to hold that a Hearing Officer may uphold any discipline issued which he or she finds to be consistent with the mandates of Career Service Rules; that is, regardless of the Matrix, if the Agency's imposed discipline is within the range of alternatives available to a reasonable and prudent administrator, the Hearing Officer may uphold that discipline. If the Hearing Officer determines that the discipline imposed is arbitrary, excessive or otherwise not supported by the record, the Hearing Officer may reverse or modify the imposed discipline. In this case, the Hearing Officer determined the ten-day suspension to be reasonable. Given the serious nature of Appellant's misconduct, and we cannot disagree.

We have reviewed Appellant's argument and the record, and we find that the discipline imposed on the other allegedly comparable deputies was not so different or disparate from that received by Appellant so as to make Appellant's discipline excessive, or even inconsistently arbitrary. The Matrix, even under its most strict construction, cannot be reasonably interpreted as to require exactitude of punishment between deputies in various and varying situations. The Matrix strives for reasonable consistency – not mathematical equality. We cannot say that Appellant's discipline was inconsistent with discipline received by other deputies under similar circumstances;⁴ and even if the disciplines were not precisely proportional, we cannot say that said lack of precise proportionality rendered Appellant's discipline excessive or arbitrarily imposed.

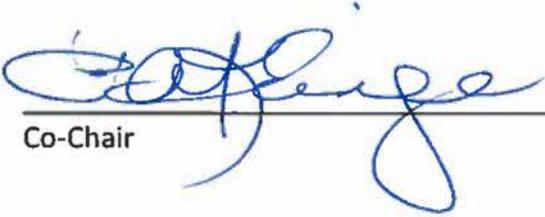
Finally, Appellant argues that the Hearing Officer's decision sets improper precedent because it condones the issuance of inconsistent discipline. As we noted above, the Hearing Officer's decision did no such thing. And in any event, we do not believe the Hearing Officer's decision set any precedent at all; his decision as to the appropriateness of the imposed discipline was based on an individualized assessment of the specific evidence presented to him. We see no policy or precedent arising from this decision.

For all the above reasons, the Hearing Officer's decision is AFFIRMED.

⁴ Indeed, as the Agency's analysis found at pages 12-13 of its brief (an analysis we find to be supported by record evidence, reason and mathematics), the discipline received by Appellant was remarkably similar and consistent to the discipline received by her allegedly comparable deputies.

SO ORDERED by the Board on July 20, 2017, and documented this 3rd day of August, 2017.

BY THE BOARD:



Co-Chair

Board Members Concurring:

Neil Peck

Patricia Barela Rivera

Tracy Winchester