DATE FILED: March 16, 2018
CASE NUMBER: 2017CV33236

District Court, City and County of Denver, Colorado Court Address: 1437 Bannock Street Denver, CO 80202	
Plaintiff: ANGELA BARRA v. **Defendants:** CAREER SERVICE AUTHORITY BOARD of the CITY AND COUNTY OF DENVER; CITY AND COUNTY OF DENVER, and DEPARTMENT OF SAFETY for the CITY AND COUNTY OF DENVER	▲ **COURT USE ONLY** ▲ Case Number: 17CV33236 Ctrm: 424
ORDER	

THIS MATTER is before the Court on a complaint filed pursuant to C.R.C.P. 106(a)(4), seeking reversal of an order entered by the City and County of Denver's Career Service Board affirming the decision of a hearing officer's decision to affirm a 10-day suspension upon Plaintiff, a deputy sheriff with the Denver Sheriff's Department. The discipline was based on Defendants' finding that Plaintiff violated Departmental rules by failing to complete required rounds; failing to properly document reasons for not completing required rounds; and for leaving her post without obtaining required coverage. The Court has reviewed the record of the prior proceedings; the written orders of the hearing officer and the Career Service Board; Plaintiff's Opening Brief, Defendants' Response Brief, and Plaintiff's reply thereto, as well as the Court's file. Upon consideration thereof, and having reviewed applicable authorities and being advised in the premises, the Court finds and orders as follows.

Under Rule 106(a)(4), a party may seek relief where a governmental body or officer has exceeded its jurisdiction or abused its discretion, and there is no plain, speedy and adequate remedy otherwise provided by law. Judicial review pursuant to Rule 106 is limited to a determination of whether the body

or officer has exceeded its jurisdiction or abused its discretion, based on the evidence in the record before the defendant body or officer. C.R.C.P. 106(a)(4)(I). When reviewing a decision pursuant to Rule 106(a)(4), a court considers whether an erroneous legal standard was applied by the governmental body. *City of Colorado Springs v. Givan,* 897 P.2d 753 (Colo. 1995). The rule permits a district court to reverse a decision of an inferior tribunal only if there is "no competent evidence" to support the decision. *Id.,* 897 P.2d at 756. "No competent evidence" means that the ultimate decision of the administrative body is so devoid of evidentiary support that it can only be explained as an arbitrary and capricious exercise of authority. *Id.,* 897 P.2d at 756; *Ross v. Fire & Police Pension Ass'n,* 713 P.2d 1304 (Colo. 1986).

Plaintiff admits in her Opening Brief, as she did in the proceedings below, that, on the date that is the subject of the disciplinary proceeding, she failed to make all of her required rounds; that she failed to document her rounds into the Departmental database; and that she left her duty assignment – all of which were grounds alleged for the imposition of discipline. However, she asserts that the findings of the hearing officer and the review by the Career Service Board are nevertheless erroneous because "there is no evidence that [they] ever considered large quantities of evidence presented at [the] hearing." Plaintiff further asserts that, despite her prior admissions that she completed only 14 of her required 24 rounds, the findings of the Defendants are "erroneous" and "in direct contravention of the evidence" because their findings do not reflect a review of video tape evidence that might have shown that she completed additional rounds, and that the findings fail to reflect consideration that the computerized database that documented her rounds could have been inaccurate. Plaintiff essentially argues that reversal is required because the Defendants did not make specific findings on all of the evidence presented at the hearing, and/or that they failed to draw inferences from evidence that *might* have existed. However, the former is not required; the latter is not permitted.

The decision below is based upon Plaintiff's admissions that she committed the precise acts that were the basis for the alleged disciplinary violation. The findings of Defendants are fully supported by the record. Defendants' actions were neither arbitrary, capricious, or an abuse of discretion.

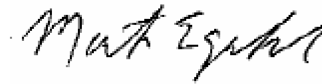
Nor does the record support Plaintiff's assertion that the 10-day suspension imposed as discipline was inconsistent with the disciplinary action imposed upon other deputy sheriffs. Plaintiff asserts that, although she completed a higher percentage of rounds on the shift in question than two other deputy sheriffs who were assigned to subsequent shifts, she nonetheless

received the equivalent discipline (as opposed, presumably, to some mitigated level of discipline). However, the Career Service Board found, with evidentiary support, that "the discipline imposed on the other allegedly comparable deputies was not so different or disparate from that received by [Plaintiff] as to make [Plaintiff's] discipline excessive, or even inconsistently arbitrary." Moreover, while Defendants are obligated to achieve reasonable consistency in discipline, there is no requirement that such discipline be mathematically proportionate to other similarly situated deputies. Here, the discipline imposed was consistent with the presumptive discipline set forth in the Agency's published guidelines and equivalent to discipline imposed for substantially similar behavior. Plaintiff's assertion that the level of discipline imposed was inappropriate or imposed inconsistently lacks merit.

The judgment of the Career Service Board is affirmed.

SO ORDERED this 16th day of March, 2018.

BY THE COURT:



Martin F. Egelhoff
District Court Judge