

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

Appeal No. 13-11

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**FINDINGS AND ORDER**

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IN THE MATTER OF THE APPEAL OF:

**MATHEW CAROTHERS,**

Appellant/Respondent,

vs.

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

Agency/Petitioner.

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This matter is before the Career Service Board on Petitioner's Petition for Review and related briefing and Respondent/Appellant's Motion to Strike Petitioner's Brief and Summarily Affirm the Hearing Officer's Decision and related briefing. The Board has reviewed and considered the full record before it and **AFFIRMS** the Hearing Officer's Decision of January 5, 2012, as follows.

**FINDINGS**

Respondent/Appellant was terminated from his employment as a deputy sheriff for alleged violations of specified Career Service Rules: Sections 16-60 B., E.3., L., M., Y., or Z. The Agency terminated Respondent/Appellant for conduct related to alleged excessive use of force on an arrestee on November 20, 2009, and related to Respondent/Appellant's alleged dishonesty regarding his actions toward the arrestee.

The Hearing Officer found that Respondent/Appellant was in violation of the Agency's use of force Departmental Order, 5011.1H, and Departmental Rule and Regulation 400.6, and that he therefore violated CSR 16-60L; however the Hearing Officer also found that he lacked intent to harm the arrestee. The Hearing Officer also found that Respondent/Appellant violated CSR 16-60 B, Carelessness in performance of duties. The Hearing Officer did not find any violation of 16-60 E 3, An Act of dishonesty, nor of 16-60 M, 16-60 Y or 16-60 Z. The Hearing Officer found that the most egregious factors were not established by the Agency and specifically found that the Agency did not consider the incident sufficiently egregious at the time it occurred to remove Respondent/Appellant from contact with inmates during the 15 month

investigation following the incident. The Hearing Officer modified the discipline to a ten-day suspension, with back pay and benefits reinstated.

On appeal to the Board, Appellant argues that the Hearing Officer's findings are clearly erroneous and "set terrible precedent." Respondent/Appellant moves to strike Petitioner's Brief for failure to comply with the mandate of CSA Rule 19-65(A) that "the petitioner's brief shall be supported by appropriate citations to the transcript and the record." (Emphasis added) Respondent/Appellant's argument is correct, and the Board finds that it could strike Petitioner's Brief for violating CSA Rule 19-65(A). Petitioner's Brief is replete with factual assertions with no citation to the record. It is not enough for a petitioner to simply order a transcript and designate hearing exhibits, including videos and recordings, as the record on appeal; an appellant must provide specific citations to the record to support his argument. It is not the Board's responsibility to sift through the record looking for evidence that may support or refute an argument made on appeal. Here, the Board elects not to strike Petitioner's brief, but determines that nothing before the Board supports Petitioner's assertion that the Hearing Officer's decision is not supported by the record and is clearly erroneous. The Board, therefore, affirms the Hearing Officer's decision.

#### **ORDER**

**IT IS THEREFORE ORDERED** that the Hearing Officer's Decision of January 5, 2012, is **AFFIRMED**.

SO ORDERED by the Board on May 17, 2012, and documented this 16<sup>th</sup> day of July, 2012.

BY THE BOARD:



Colleen M. Rea  
Co-Chair

Board members concurring:

Michelle Lucero  
Amy Mueller