

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

Appeal No. 46-16A

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In the Matter of the Appeal of:

**MONWELL FULLER,**

Appellant,

v.

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

Respondent/Agency.

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**DECISION AND ORDER**

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On January 18, 2016, Denver Deputy Sheriff Monwell Fuller (Appellant) was working at the Downtown Detention Center in a housing unit. He got into a dispute with an inmate over the use of a telephone. Appellant took the telephone from the inmate and ordered him back to his cell. Heated words were exchanged but the prisoner eventually started to walk away from Appellant. While the prisoner was walking away from Appellant, Appellant followed the prisoner and shoved him hard in the back. The prisoner turned around to face Appellant and in doing so adopted an aggressive stance, with his fists clenched but his arms down by his side. The prisoner did not make any attempt to strike the Appellant. Nevertheless, Appellant punched the prisoner in the face. As the prisoner was reeling from the punch, Appellant grabbed him by the neck and wrestled him to the ground, utilizing techniques one witness would later describe as something out of the professional wrestling world as opposed to any methods trained on or approved by the Agency.

Appellant was discharged by the Denver Sheriff Department (Agency) for his use of unnecessary and unreasonable force. Appellant appealed his discharge to a Hearing Officer. The Hearing Officer affirmed the Agency's disciplinary action. Appellant then appealed the Hearing Officer's decision to this Board.

Appellant first argues in his brief that The Hearing Officer misinterpreted Agency rules which prohibit the use of inappropriate force. We agree with the Agency, however, that the

Hearing Officer's decision did not actually involve an interpretation, let alone an erroneous interpretation of the Agency's internal rules and regulations. Appellant's argument boils down to nothing more than his belief that the Hearing Officer made a mistake in finding that his conduct amounted to a violation of the clear language of the rules in question.

For example, Appellant maintains that he was permitted to use force in order to accomplish a legitimate law enforcement or detention function,<sup>1</sup> and that because what he did was, at least in his mind, a legitimate detention function, he could not have violated the rule. This argument, however, essentially cuts the Hearing Officer out of the hearing process. The Hearing Officer is not required to credit the testimony or accept as true and reasonable the beliefs of the Appellant, especially, when as in this case, the reasonableness and truth of Appellant's words and beliefs are called into question by other record evidence. The Hearing Officer determined, based on the video and other evidence that there was no need for Appellant to start the fight with the prisoner. There was no need for the Appellant to shove the prisoner in the back as he was walking away from Appellant. There was no need for Appellant to punch the prisoner in the face as the two were just standing there, glaring at each other. The Hearing Officer determined that the Appellant's attack on the prisoner did not accomplish a legitimate law enforcement or detention function<sup>2</sup> and such a conclusion is amply supported by this record.

Appellant, again at page 10 of his brief, appears to argue that because Appellant thought something was a good idea, the Hearing Officer was bound or obligated to concur with his assessment and, therefore, rule in his favor. Appellant claims that he had a "legitimate purpose" for shoving the prisoner in the back; that being, to create distance between himself and the prisoner. The Hearing Officer did not find his excuse for the shove believable, citing to the fact that the prisoner, when shoved, was walking away from Appellant and that Appellant had to follow the prisoner so he could shove him in the back. Appellant's actions are not reasonable simply because he believed them to be or stated that he believed them to be. The Agency, the entity responsible for setting standards of workplace conduct, gets to weigh in on the reasonableness of its employees' actions and bring discipline against an employee if it believes its standards have been violated. The Hearing Officer, the person responsible for deciding whether the Agency has proven its allegations of misconduct against an employee, also has the obligation of judging the propriety of Appellants conduct. Appellant's personal beliefs and statements, regardless of whether they are genuine and regardless of whether they are credible, do not dictate the outcome of our hearings. The Hearing Officer's conclusion is supported by competent evidence in the record.

We further observe that even if Appellant had been determined to have been telling the truth about his motivation for the shove, it would not absolve him of a violation of the rules prohibiting unreasonable force. The fact is, based on this record, that while the shove may have

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<sup>1</sup> Appellant's brief, bottom of page 8.

<sup>2</sup> Hearing Officer decision, p. 6, third paragraph.

created distance between Appellant and the prisoner, that same distance would have been created by the prisoner himself had he been allowed to continue to walk away from Appellant.<sup>3</sup> There was simply no reason for the Appellant to use any force at all in order to put distance between himself and the prisoner, when the prisoner was doing that very thing without the gentle coaxing of Appellant's shove to his back. Appellant's shove of the prisoner was totally unnecessary and, therefore, unreasonable.

Appellant, at page 12 of his brief, alleges that the Hearing Officer ignored the testimony of the inmate, Appellant and one of Appellant's witnesses, Deputy Sheldon Marr. The Hearing Officer's decision does not demonstrate that she ignored the testimony of these witnesses, only that she was not persuaded by their testimony.

We also do not believe, as alleged by Appellant, that the Hearing Officer erred by finding that Appellant violated Career Service Rule 16-60A, which is a prohibition against neglectful performance of one's duties. The Hearing Officer correctly determined that one of Appellant's duties is the care of inmates. The Hearing Officer deemed Appellant's attack on the inmate as antithetical to that duty. We believe this amounts to a correct interpretation of pertinent rules and that this conclusion is supported by competent evidence in the record.

Appellant claims the Hearing Officer's finding is not logical because it allows inmates to be disruptive and Appellant's actions amounted nothing more than his handling of a disruptive inmate. Appellant's argument fails if for no other reason than the disruption which the inmate initially caused by using the telephone and which Appellant claims he needed to quell had ceased by the time he decided to attack the inmate. At the time Appellant decided to shove the inmate from behind, the inmate was no longer being disruptive – and the further disruption that ensued was a direct result of Appellant choosing to attack the prisoner. The Hearing Officer's decision does not permit, as alleged by Appellant, the inmates to "run the roost,"<sup>4</sup> nor does it discourage any deputy from the use of reasonable force when necessary to protect himself or others. Appellant's unwarranted hyperbole concerning the dire consequences of deputies laying fingers on inmates<sup>5</sup> does not persuade us to overturn the Hearing Officer's decision.

Appellant next argues that the Hearing Officer erred in determining that discharge was an appropriate penalty for Appellant's use of inappropriate force. We disagree.

First, we do not believe that the Civilian Review Administrator (CRA), the person responsible for issuing Sheriff discipline, misinterpreted any aspect of the Agency's Disciplinary Matrix when imposing the penalty in his case. The Hearing Officer, in evaluating the CRA's matrix analysis, found it to be not only reasonable, but also factually supported.

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<sup>3</sup> And had Appellant not intentionally closed the distance between the two by following the prisoner, there would have been no need for Appellant to implement the shove to create more distance between them.

<sup>4</sup> Appellant's brief, p. 14.

<sup>5</sup> *Id.*

In addition, the Hearing Officer further determined that regardless of the Matrix, the penalty issued in this case was consistent with Career Service Rules. We agree. Appellant's misconduct was extremely serious. Appellant's misconduct also demonstrated that he was unlikely to be able to reform. Discharge, under the circumstances of this case, was an option available to a reasonable administrator and neither the Hearing Officer nor the Agency erred by taking advantage of and affirming the use of this option.

Appellant claims that the punishment of discharge was too severe for the acts of misconduct allegedly proven. In support of this claim, Appellant points us to three of our previous decisions<sup>6</sup> where we affirmed or imposed penalties less than discharge for misconduct similar to that committed by Appellant in this case. One case, however, is conspicuously absent from this list, that being case no. 39-14A, an appeal brought by our Appellant, Monwell Fuller. In Appellant's first case, he was found to have initiated an attack on a prisoner which included choking that prisoner for eight seconds. For that act of misconduct, Appellant received a ten-day suspension. So Appellant comes to us today not as a first-time offender, but rather as a repeat offender; someone who has already engaged in acts of inappropriate force, and someone who has demonstrated as a result of his repeat offending, that he did not get the message or that he did not care about the message. Appellant's misconduct in this case is materially different from the three cases cited by Appellant in his brief because it is repeat misconduct. The Agency is not required to wait for Appellant to unleash a third strike against an inmate before he can be called out.<sup>7</sup>

The Hearing Officer's decision is AFFIRMED.

SO ORDERED by the Board on February 16, 2017, and documented this 16th day of March, 2017.

BY THE BOARD:



Co-Chair

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<sup>6</sup> Appeals of: Thomas Ford, No. 48-14A; Ned St. Germain, No. 24-14A; and Darrell Jordan, No. 30-14A.

<sup>7</sup> We do not believe the upholding of Appellant's discharge sends any mixed or inappropriate message to any other deputy as alleged by Appellant at page 16 of his brief. First, because this is Deputy Fuller's second time being disciplined for inappropriate force, it is no way inconsistent with other discipline issued to first time offenders. Deputy Fuller's punishment for his first use of inappropriate force was directly in line with discipline received by other deputies for their first offenses. If the message sent by this decision is that the Agency and/or this Board will not tolerate repeat acts of misconduct involving the use of inappropriate, and that message is received by all involved, then we believe such a precedent will work for the betterment of the Agency's ability to serve the public.

**Board Members Concurring:**

**Neil Peck** \_\_\_\_\_

**Patricia Barela Rivera** \_\_\_\_\_