

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

Appeal No. 77-17A

In the Matter of the Appeal of:

EMINA GEROVIC, Appellant - Petitioner,

vs.

GENERAL SERVICES, FACILITIES MANAGEMENT,
and the City and County of Denver, a municipal corporation, Agency-Respondent.

DECISION AND ORDER

Emina Gerovic (Appellant) was a custodian for the City and County of Denver's General Services, Facilities Management division (Agency). Appellant was discharged by the Agency for multiple acts of untruthfulness. She appealed her discharge to a Hearing Officer. The Hearing Officer determined that the Agency had not met its burden of proving various alleged rule violations involving her work, and further that the Agency had failed to prove that Appellant was guilty of all of the acts of alleged untruthfulness outlined in the Notice of Contemplation of Discipline letter served on her.

The Hearing Officer did determine, however, that the Agency had proven three acts of dishonesty in violation of Career Service Rule 16-29(D). First, the Hearing Officer found that when questioned about how her Facebook page came to list her employment as "police officer," Appellant's response of, "I assume it popped up automatically" was a lie. Second, the Hearing Officer determined that her claim that her Facebook photos, showing her dressed in Denver Police Department attire, were meant as a joke, was untruthful. Finally, the Hearing Officer determined that Appellant had been untruthful when she represented to management that a supervisor had promised her a permanent position cleaning Police District 5 administrative offices.¹

The Hearing Officer determined that Appellant had received a prior warning cautioning her against wearing Police clothing and running the risk of people mistakenly believing that she was member of the Denver Police Department. The Hearing Officer also acknowledged that Appellant, four months prior to her discharge, had received a

¹ The Hearing Officer also found that Appellant had violated internal Agency rules which require a respectful workplace by using vulgar language with other employees. The Agency's disciplinary decision maker, James Williamson, testified, however, that it was Appellant's acts of dishonesty which primarily fueled the decision to discharge her.

written reprimand, based, in part, on acts of dishonesty.² The Hearing Officer further evaluated the likelihood that Appellant would be able to reform and appropriately in the future in an attempt to determine whether a lesser punishment would accomplish the goal of correcting her conduct. The Hearing Officer found that Appellant would, in all likelihood, not learn the appropriate lesson from a lesser degree of discipline. Accordingly, the Hearing Officer upheld the Agency's discharge of Appellant.

Appellant has appealed the Hearing Officer's decision to this Board. We AFFIRM the Hearing Officer's decision.

Appellant argues in her brief the Hearing Officer erred in finding that she had violated CSR 16-29(D) which prohibits the commission acts of dishonesty, including lying. The Hearing Officer found that Appellant had committed three acts of dishonesty. Appellant argues, however, that the Hearing Officer ignored certain evidence, for example, the testimony of a Denver police sergeant, and that comparing the testimony of the sergeant with the testimony and evidence relied on by the Hearing Officer, should lead us to conclude that the Hearing Officer's decision is clearly erroneous.

It appears to us, however, that Appellant has misapprehended what it means for factual findings to be "clearly erroneous." A Hearing Officer's factual findings and conclusions based thereon are not clearly erroneous simply because a party believes the Hearing Officer gave insufficient weight to a witness's testimony. The Board, after all, does not re-weigh evidence or assess credibility. Those tasks are the responsibility of the Hearing Officer. Appellant's argument is nothing more than a claim that the Hearing Officer should have reached different conclusions about Appellant's conduct than the ones he did. This claim is not proof that the Hearing Officer's decision is clearly erroneous.

For the Hearing Officer's decision to have been clearly erroneous, Appellant would have needed to demonstrate that the record lacked factual support for his findings. Evidence in the record which might contradict the findings is not sufficient to demonstrate a lack of evidence. Indeed, it is a regular occurrence for the record to contain conflicting evidence, some supporting the Agency and some supporting the Appellant. It is the Hearing Officer's responsibility to evaluate that evidence, assign it the weight he deems it to be worth, assess credibility of witnesses, and resolve conflicts in evidence in reaching a final decision.

In this case, as the Agency has ably documented in its brief, all of the factual findings and conclusions made by the Hearing Officer in support of his findings that Appellant committed rules violations are well-supported by record evidence. The

² While the written reprimand post-dated the initial appearance of the false Facebook matters, the reprimand should have put Appellant on notice that she needed to remove, delete or somehow correct the false postings and photos. Her failure to do so amounted to a deliberate continuation of dishonest acts which she knew needed to cease.

Hearing Officer's findings and conclusions concerning Appellant's rules violations are not clearly erroneous, and, as a result, will not be overturned by the Board.

Appellant next argues the Hearing Officer erred in failing to issue subpoenas for certain witnesses. First, we note that the rule regarding subpoenas is permissive; it does not actually require the Hearing Officer to issue subpoenas. We interpret the permissive nature of the language to mean that it is within the Hearing Officer's discretion as to whether subpoenas should be issued. The Appellant had the opportunity through motion and through offers of proof at hearing to convince the Hearing Officer that certain witnesses should be compelled to testify.

We have reviewed the substance of the motion for subpoenas, as well as the offer of proof provided by Appellant's counsel, and conclude that Appellant did not prove sufficient cause for the Hearing Officer to have been required to issue the requested subpoenas. The Hearing Officer, therefore, did not abuse his discretion in failing to issue the requested subpoenas, and further, did not misinterpret the Rule regarding subpoenas. We believe the record reveals that Appellant received a full and fair hearing.

Finally, Appellant takes issue with the Hearing Officer's decision to uphold the penalty of discharge. We have reviewed the Hearing Officer's analysis and find it legally and factually sufficient. We note that Appellant was not a long-term employee and, within the short period of time she worked for the City, she exhibited issues regarding truthfulness. The Agency, just as any other employer, was justified in placing a high value on honesty, integrity and truthfulness. An employee should not need to be warned that they are required to act truthfully and honestly; yet, Appellant *had* been warned, but still subsequently failed to meet those reasonable expectations.

We affirm the Agency's and the Hearing Officer's decisions to impose and uphold the penalty of discharge, as we find that penalty, to be one which is available to a reasonable and prudent manager under the circumstances.

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

SO ORDERED by the Board on November 15, 2018, and documented this 20th day of June 2019.

BY THE BOARD:



Neil Peck, Co-Chair

Board Members Concurring: Karen DuWaldt, Patricia Barela Rivera, Tracy Winchester

CERTIFICATE OF DELIVERY

I certify that I delivered a copy of the foregoing **DECISION AND ORDER** on June 20, 2019, in the manner indicated below, to the following:

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For the Career Service Board