

**CAREER SERVICE BOARD,  
CITY AND COUNTY OF DENVER, COLORADO**  
Appeal No. 42-16A

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In the Matter of the Appeal of:

**WILLIAM JACKSON,**

Respondent-Appellant,

v.

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

Petitioner-Agency.

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**DECISION AND ORDER**

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Denver Deputy Sheriff William Jackson (Appellant) engaged an inmate with mental problems concerning his possession of a hardback cover of a bible. Under the rules of the jail, the hardcover was contraband. Deputy Jackson took the book cover and tossed it down a hallway where it would be picked up later. The inmate (MW) objected, claiming that this cover was actually his bible. Appellant and MW engaged in a further discussion which came to the conclusion that MW could either enjoy his remaining time out in the free area or he could go back into his cell. MW continued to argue about his bible, so Appellant chose to terminate MW's free time and place him back in his cell. Appellant grabbed MW by the back of the shirt and moved him down the hallway towards his cell. As he approached the cell door, MW set his feet and braced one arm on the doorframe. Deputy Jackson interpreted this action as resistance. He grabbed MW around the neck and flung him to the rear. MW's head came in contact with a metal table that was located outside the cell door. MW suffered only minor injuries as a result, but Appellant was terminated by the Denver Sheriff Department (Agency) from his employment for his use of inappropriate force against MW.

Appellant appealed his termination. The Hearing Officer determined that several factors the decision-maker (Civilian Review Administrator or "CRA", Shannon Elwell) used to arrive at the conclusion that discharge was an appropriate punishment for Appellant's use of inappropriate force were absent from the record. Given that the justification for imposing the penalty of termination was not proven by the Agency, the Hearing Officer, while finding that Appellant had, indeed, used inappropriate force against MW in violation of Career Service Rules and Sheriff Department Regulations, vacated the termination. The Hearing Officer then

modified the discipline to a six-day suspension<sup>1</sup>, using the terms and principles of the Agency's Disciplinary Matrix and accompanying Handbook as her road map for arriving at her discipline modification.

The Agency has appealed the Hearing officer's decision to modify the discipline to a six-day suspension. We are compelled to AFFIRM the Hearing Officer's decision.

The Agency, of course, filed a Petition for Review in a timely fashion. In that Petition, the Agency set out its grounds for appeal, that is, it enunciated the jurisdictional grounds on which it sought, from this Board, reversal of the Hearing Officer's decision. The Agency's Petition for Review cites three grounds for overturning the Hearing Officer's decision: Erroneous Rules interpretation under Career Service Rule (CSR) 19-61B; Policy Setting Precedent pursuant to CSR 19-61C; and Insufficiency of Evidence per CSR 19-61D. But the promise of these arguments to come went unfulfilled in the Agency's brief.

The Agency's brief did not contain a single reference to an erroneous rules interpretation. The fact that the Agency disagrees with the Hearing Officer's decision is not sufficient substitute for a reference to a specific rule or regulation that was misinterpreted accompanied by an explanation as to why the Hearing Officer's interpretation of that rule was incorrect. The Agency failed to posit an argument in its brief supporting a claim of erroneous rules interpretation. We consider that argument waived.<sup>2</sup>

Similarly, the Agency failed to advance any argument in its brief supporting its claim that the Hearing Officer's decision involved or implicated an improper policy-setting precedent. This argument is also waived.<sup>3</sup>

Finally, we turn to the Agency's claim made in its Petition for Review that the Hearing Officer's decision should be overturned for insufficiency of evidence under CSR 19-61D. This rule states:

D. Insufficient evidence: The Hearing Officer's decision is not supported by the evidence. The Board may only reverse a decision on this ground if the Hearing Officer's decision is clearly erroneous;

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<sup>1</sup> Per the terms of the Matrix, the Hearing Officer determined that Appellant's misconduct amounted to a Matrix Category D violation which would carry a presumptive penalty of a ten-day suspension; but that sufficient mitigating circumstances were present in the record to warrant the imposition of the Matrix Category D – Mitigated penalty of a six-day suspension.

<sup>2</sup> Nevertheless, after a review of the Hearing Officer's decision, we do not believe The Hearing Officer misinterpreted any career Service Rule, any rule or regulation promulgated by the Agency, or any part of the Disciplinary Matrix or Handbook.

<sup>3</sup> Again, even if this argument had not been waived we do not view the Hearing Officer's decision as setting any improper precedent.

The argument advanced by the Agency, however, is not that the Hearing Officer's decision was not supported by evidence or was clearly erroneous, but rather that the CRA was correct in what she did. The Agency, at page 2 of its brief, warned us that its brief:

will show that the evidence, including the objective video evidence, supports the CRA's factual and ultimate findings and that, in determining the appropriate disciplinary sanction, she properly applied the provisions of the DSD Discipline Handbook and the CSA disciplinary guidelines.

And indeed, that is precisely what the next 38 pages of the brief attempted to do.<sup>4</sup>

But if that was all the Agency intended to do with its brief, it need not have bothered. The issue on appeal under CSR 19-61D and under the rules generally, is not whether the Board would rule in a fashion identical to the Hearing Officer, but rather whether the record presents us with grounds for overturning the Hearing Officer's decision. To put it another way, there must be a reason to overturn the Hearing Officer's decision and that reason (or reasons) must relate to one or more of the grounds for appeal found in CSR 19-61.

Here, the Agency has only argued that the CRA was right in her facts and her conclusions. We do not, however, decide between two sets of factual findings, the CRA's and the Hearing Officer's – and then choose the one we like best. Rather, we overturn the Hearing Officer's factual findings only if they are unsupported by the record and, therefore, clearly erroneous. The Agency, in its briefs, never argues that the Hearing Officer's factual findings lack record support. Instead, the Agency only argues that the CRA's factual findings are supported by the record. But even assuming the soundness of the CRA's factual determinations, it does not mean, given the Hearing Officer's obligation to resolve conflicts of record evidence, that her factual findings are unsupported by record evidence.

We believe Appellant, at page 30 of his brief, correctly assessed the efficacy of the Agency's argument where he refers us to our decision in *In Re St. Germain*, No. 24-12A. In that case, we noted, in so many words, it is simply not enough for a party to argue that they were right and therefore, by implication, the Hearing Officer was wrong. We are presented with just that situation in the instant case. The Agency makes no effort to point to a single factual finding made by the Hearing which, allegedly, is not supported by record evidence. Accordingly, the Agency has failed to make a case that any factual finding made by the Hearing Officer is clearly erroneous.<sup>5</sup> The Agency has presented us with no justifiable grounds for overturning the Hearing Officer's decision.

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<sup>4</sup> At page 40 of its brief, the Agency sums up the prior thirty-nine pages by concluding, "[t]he record in this case is replete with factual and analytical support for the CRA's disciplinary decisions and shows she complied with the matrix system and CSA guidelines."

<sup>5</sup> Our review of the record would lead us to conclude that all the factual findings made by the Hearing Officer are supported by the record and are, therefore, not clearly erroneous.

Accordingly, as noted above, we are compelled to conclude that the Hearing Officer's decision should be AFFIRMED.<sup>6</sup>

SO ORDERED by the Board on April 6, 2017, and documented this 15th day of June, 2017.

BY THE BOARD:

  
Co-Chair

Board Members Concurring:

Neil Peck

Patricia Barela Rivera

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<sup>6</sup> The Agency has also appealed the Hearing Officer's decision to allow evidence regarding the jail's Conduct Adjustment Board into evidence. That Board determined that MW engaged in conduct in violation of jail rules. The Hearing Officer found the evidence to be relevant and admitted it into the record. The Agency disagrees with this decision. At our hearings, formal rules of evidence do not apply. The decision whether to admit documents or testimony into evidence is within the sound discretion of the Hearing Officer. We do not believe the Hearing Officer abused her discretion by allowing the contested material into the record for the reasons stated by the Hearing Officer during the hearing..