CAREER SERVICE BOARD,
CITY AND COUNTY OF DENVER, COLORADO

Appeal No. 25-16A

In the Matter of the Appeal of:

SONYA LEYBA,

Petitioner-Appellant,

v.

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

Respondent-Agency.

DECISION AND ORDER

There is an underground passage between the Lindsay Flannigan Courthouse and the Downtown Detention Center (DDC). Inmates are transported through this tunnel from their cells in the DDC to reach courtrooms located in the Flannigan Courthouse. An elevator runs from this underground area to the levels of the courthouse where the courtrooms are located. The elevators are not run by pushing buttons in the elevator car like elevators the public is accustomed to, but rather, they are operated by a Deputy Sheriff from a remote location known as a Control Center.

On January 5, 2015, from 3:00 to 5:00 p.m., Sonya Leyba (Appellant) was tasked with monitoring and operating these elevators. At approximately 4:49 p.m. of that afternoon, an inmate was placed in the elevator on the 4th floor of the courthouse to be taken back to his cell after his court appearance. Appellant, evidently, was not checking her elevator monitor and, as a result, she never noticed that the inmate had been placed in the elevator. The inmate remained stuck in the elevator until a sergeant, some thirty-six minutes later, noticed him on the Control Center monitor. For her inattention to her duties, the Sheriff Department (Agency) issued Appellant a ten-day disciplinary suspension.

Appellant appealed her suspension to a hearing officer. The Hearing Officer upheld the Agency's disciplinary action. Appellant then appealed the Hearing Officer's decision to this Board. We AFFIRM the Hearing Officer's decision.

Appellant first argues that her punishment should have been mitigated because she was only on duty for a portion of the time the inmate was stuck in the elevator. The fact that others may also have been responsible for perpetuating the effects of the error initially made by Appellant does not require mitigation of the penalty imposed on Appellant. The Agency is not required to engage in an analysis of comparative discipline in the same manner a jury would consider an issue of damages in a comparative negligence context. But for Appellant's failure to do her job and monitor the elevator, the inmate would never have been stuck in the elevator. The Agency was not being unreasonable in concluding that Appellant was responsible for the inmate being stuck in the elevator.

Appellant next argues that the Agency's determination that Appellant's misconduct amounted to a Matrix Category D violation is not supported by the evidence. We disagree. A Category D violation involves conduct which is substantially contrary to the guiding principles of the department or that substantially interferes with its mission, operations or professional image or that involves a risk to employees or the public. The Hearing Officer's analysis of the Agency's action (found at page 6 of his decision) is both reasonable and supported by record evidence. As such, we see no grounds for overturning that decision. And again, whether the Agency's Matrix analysis was pristine or something less is not dispositive on the issue of the appropriateness of discipline. The Hearing Officer's determination that a ten-day suspension was within the range of alternatives available to a prudent administrator, is, based on this record, appropriate.

Finally, Appellant argues that the Civilian Review Administrator (CRA) used statements made by Appellant at her pre-disciplinary conference against her and that this was improper. Initially, we reject this proposition from a sheer logic standpoint. If a deputy was being disciplined for breaking a prisoner's arm and stated at his pre-disciplinary conference that his only regret was not breaking the other arm as well, it is absurd to think that this statement could not be used against the deputy when discipline finally issued.

But Appellant claims that using her statements against her violated her right to contest the charges brought against her. But this is not the case. Appellant has been afforded her full panoply of rights: notice of charges and an explanation of the evidence against her; an opportunity to respond before discipline was imposed; appeal to a hearing officer; discovery; ability to testify and have people testify on her behalf; ability to introduce documentary evidence on her behalf; ability to cross examine witnesses testifying against her; and appeal to this Board. Appellant's rights have not been diminished and she has not been punished for exercising any of those rights.

Appellant's "mathematical" argument is equally unavailing. Appellant argues that the CRA considered mitigating factors and then considered aggravating factors. Those considerations turned out to be a wash, with the CRA imposing neither a mitigated nor an aggravated penalty, but rather the presumptive Category D penalty of a ten-day suspension. Appellant claims that one of the factors on the aggravating side of the equation, her failure to

accept responsibility, should not have been considered and that, as a result, the balance of the equation tilted towards the mitigation side; entitling her to a mitigated penalty. This argument fails at several levels.

First, there was nothing improper about the CRA considering Appellant's failure to accept responsibility by blaming others as an aggravating factor.[1] We do not see this attempt at blame shifting as an innocent, good faith exercising of her right to protest or maintain her innocence. Accordingly, the CRA did not abuse her discretion or otherwise act improperly in considering these actions as an aggravating factor working against Appellant.

Second, even if the equation did tilt towards the mitigation side, there is nothing in the Matrix or our Rules which required the imposition of a mitigated penalty. The fact that the CRA could have imposed a mitigated penalty did not create a duty on her part to actually impose that mitigated penalty. As discussed above, the Hearing Officer determined that the imposition of a ten-day suspension was not excessive under the circumstances based on record evidence.

Finally, Appellant argues that the CRA was absolutely prohibited from considering Appellant's statements made at her pre-disciplinary hearing, based on a provision of the Matrix's Disciplinary Handbook which states, "In determining mitigating and aggravating factors, the reviewer may look to the misconduct itself ..." Appellant makes the utterly unwarranted and patently unreasonable argument that where the handbook says the reviewer "may" look to the conduct itself, it means that the review "may only" look at the conduct itself when determining aggravation and mitigation. There is no reason for us to read the word "only" into the handbook provision and we decline to do so. We give the language of the Handbook its plain meaning. The Handbook states that in determining mitigation and aggravation, the reviewer ***may*** look to the misconduct itself. This language neither requires the CRA to consider the misconduct nor limits the CRA's consideration to only the misconduct when determining aggravation and mitigation.

In sum, we hold the Hearing Officer did not err in failing to modify the CRA-imposed discipline of a ten-day suspension to a penalty in the Category D mitigated range.

The Hearing Officer's decision is AFFIRMED.

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[1] Appellant cites to a Hearing Officer decision in *In Re: Mack*, No. 43-12 to support its argument that the Agency may not use statements given at a pre-disciplinary meeting as aggravation. *Mack*, however, is inapposite. The Hearing Officer in *Mack* was not considering pre-disciplinary statements in aggravation or mitigation, but rather, was rejecting the Agency's use of Appellant's denial of guilt as to the allegations of misconduct as substantive evidence supporting the charge of misconduct itself. That simply was not the situation encountered by the Hearing Officer in the instant case.

SO ORDERED by the Board on May 18, 2017, and documented this 3rd day of August, 2017.

BY THE BOARD:

Co-Chair

Board Members Concurring:

Gina Casias

Neil Peck