CAREER SERVICE BOARD
CITY AND COUNTY OF DENVER, COLORADO

Appeal No. 60-11A

ORDER

IN THE MATTER OF THE APPEAL OF:

SANDRA ROYBAL,
Appellant,

vs.

DEPARTMENT OF AVIATION,
And the **CITY AND COUNTY OF DENVER**, a municipal corporation,
Agency.

Petitioner-Appellant Sandra Roybal was a Communications Coordinator at Denver International Airport. Her duties and responsibilities included negotiating contracts for DIA's telecommunications needs with outside vendors. It was also required that she exhibit the highest level of ethical behavior and that she model this ethical behavior for subordinates.

On May 31, 2011, Petitioner mishandled her AT &T-supplied iPhone. It flew out of her hands and, as a result, the face glass on the phone broke. As it turned out, two other employees had mishandled their iPhones resulting in broken glass as well. Despite the fact that Petitioner was aware that the City's contract with AT&T did not provide for phone replacement for broken glass, Petitioner instructed a subordinate, Adam Greer, to write to AT&T in an effort to have the three phones replaced at no cost to DIA. She also instructed him to set up a meeting with AT&T to discuss the phone replacement. Petitioner advised Greer that at the meeting he should stress how much DIA pays per month for its phones and to also "play dumb" as to how the phones were broken. In Greer's letter to AT&T he made no mention of the fact that the three phones had been abused, and also misrepresented that they all had been in protective casing when broken. Petitioner reviewed the letter and made no effort to have Greer correct the misrepresentations and omissions.

A teleconference between Petitioner, Greer, AT&T, and Apple was held to discuss the replacement of the phones. Since AT&T had already refused to replace the phones DIA looked to the Apple representative for relief, claiming the iPhones were defective. When Apple refused to replace the phones Greer stated that he would hate for such a small incident to ruin the relationship between the parties. Petitioner said nothing about this not-so-veiled threat. AT&T then offered, in the spirit of customer good will, to replace the three phones at no cost to DIA, despite the fact that the parties' contract did not cover physical damage to the phones.

Greer felt remorseful about his participation in the scheme to pressure AT&T to replace the phones and reported the incident to his new supervisors. Greer also reported a new "distance" having developed in the relationship between DIA and AT&T.

The Agency investigated the matter and then discharged Petitioner. Petitioner appealed her discharge.

The Hearing Officer upheld the discharge, finding the Agency had proven charges of Neglect of Duty (CSR 16-60A), Dishonesty (CSR 16-60E), Failure to Maintain Satisfactory Relationships (CSR 16-60O), and Conduct Violating Legal Authority (CSR 16-60Y) as applied to both the City's Fiscal Accountability Rule 10.1 and Denver Revised Municipal Code, Article IV, Section 2.60. The Hearing Officer also determined that the punishment of discharge was reasonable under the proven circumstances.

Petitioner filed a timely Petition for Review. In that petition she has asked us to overturn the Hearing Officer's decision based on the following three grounds: Erroneous Rules Interpretation, Policy-setting Precedent; and Insufficient Evidence.[1] In her brief, however, we find no mention of any erroneous rule interpretation or policy-setting precedent. Consequently, we deem these grounds to be abandoned.

Petitioner's brief does, however, claim that the Hearing Officer's decision is not supported by sufficient evidence. Petitioner makes, basically, two arguments in support of this claim. First, Petitioner, in offering us a fourteen-page "summary of facts", essentially argues that her version of the facts supports her claim that the Agency failed to prove any rules violations. However, this argument cannot carry the day for Petitioner. The question is not whether there are facts in the record, which, if they had been credited and relied on by the Hearing Officer, support her position. Rather, the issue, per CSR 19-61D, is whether the Hearing Officer's factual findings are "clearly erroneous." A factual finding is clearly erroneous when it is unsupported by substantial evidence in the record considered as a whole; that is, where the factual finding has no support in the record. *In the matter of the Appeal of: Ryan Murphy and the Department of Safety*, No. 09-11A. Our review of this record leads us to conclude there is substantial evidence supporting all of the relevant factual findings made by the Hearing Officer in support of his conclusions.

Second, Petitioner argues that the Hearing Officer's findings were based on the testimony of one witness, Adam Greer, and that reliance on Greer's testimony was improper because it was contradicted by the Petitioner herself, and Petitioner was more credible than Greer. The Hearing Officer did not see things this way. Instead, he found Greer to be a credible witness – more credible than Petitioner – and chose to credit Greer's testimony over Petitioner's. We will not re-weigh the Hearing Officer's conclusions as to the credibility of witnesses. Determining the credibility of witnesses is uniquely within the province of the Hearing Officer. *In the Matter of the Appeal of Bobby Rogers and the Denver Sheriffs Department*, No. 25-08A. Petitioner's belief in her own credibility provides no basis for us to reverse the Hearing Officer.

Petitioner does not argue that that the punishment of discharge affirmed by the Hearing

[1] CSR 19-61 A, B, and C, respectively.

Officer is too harsh or otherwise inappropriate. As this argument is not before us, we will not address it.

Therefore, we AFFIRM the Hearing Officer's decision and uphold the Agency's termination of Petitioner-Appellant.

SO ORDERED by the board on July 19, 2012, and documented this 2nd day of August, 2012.

BY THE BOARD:

Chair or Co-Chair
Colleen M. Rea

Board Members Concurring:

Derrick Fuller, Patti Klinge,

Amy Mueller

CERTIFICATE OF DELIVERY

I certify that I delivered a copy of the foregoing ORDER on August 3, 2012, 2012, in the manner indicated below, to the following:

Andrea Kershner, Assistant City Attorney via email: dlefiling.litigation@denvergov.org
Office of the City Attorney, Litigation Section

Career Service Hearing Office via email: CSAhearings@denvergov.org

Deborah A. Saracens