

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

Appeal No. 44-16A

DECISION AND ORDER

IN THE MATTER OF THE APPEAL OF:

STEPHEN ROYBAL, Petitioner-Appellant,

v.

DEPARTMENT OF SAFETY, DENVER SHERIFF DEPARTMENT, and the City and County of Denver, a municipal corporation, Respondent-Agency.

Denver Deputy Sheriff Steven Roybal (Appellant) was assigned to work housing unit 2D at the Downtown Detention Center. Unlike other inmates who spend significant time interacting in open pod settings, inmates in 2D have been classified as "special management" prisoners and generally remain in their cells. One inmate, JD, was housed in 2D because he had exhibited major symptoms of mental illness.

Because these inmates are confined to their cells, they receive their meals on a tray that is slid through a hinged cell door flap. On July 31, 2015, Appellant unlocked the cell door flap to JD's cell and slid his breakfast tray through the flap and then re-locked the flap. Upon his return to collect the tray, JD became agitated as Appellant unlocked the door flap. JD cursed at Appellant and reached through the flap in an attempt to either grab or hit Appellant. He then threw his tray out through the flap, though the tray did not hit anyone. A few minutes later, JD again reached out through the flap and threw coffee on a tier clerk who had been walking by. Appellant then attempted to close and lock the flap, but JD once again grabbed at Appellant. Appellant stepped back and left without closing the flap.

Subsequently, as Appellant and the tier clerks were retrieving trays from the other cells, JD grabbed the top edge of the door flap and began lifting and then slamming it down. Appellant walked by JD's cell and while JD's hands were on top of the flap, Appellant forcefully kicked at the door, causing the metal flap to slam on JD's hands.¹ Appellant then said something to JD and walked away without securing the flap.

Appellant filed a complaint against JD but never mentioned kicking the door. He even notified his sergeant about the incident but once again failed to mention that he had kicked the door resulting in the flap slamming in JD's hands. JD also filed a complaint against Appellant for injuring his hand. An investigation into Appellant's conduct ensued.

¹ The Hearing Officer found that JD's hand had been injured as a result.

Ultimately, the Denver Sheriff Department (Agency) determined that Appellant had used inappropriate force in kicking the door so that the flap would slam on JD's hand. The Agency also determined that Appellant had been untruthful (both by acts of commission and omission) regarding the incident. As a result, the Agency terminated Appellant.

Appellant appealed his termination to a Hearing Officer. The Hearing Officer affirmed the Agency's termination of Appellant's employment. Appellant now appeals the Hearing Officer's decision. After reviewing the record, we find no error in the Hearing Officer's findings or conclusions and AFFIRM his decision.

First, we hold that the Hearing Officer did not err in his factual finding that Appellant kicked the cell door in such a manner and at such a time where it was evident that the kick could cause injury to JD. The video of the incident appears to us to support the Hearing Officer's conclusion that JD's hands were positioned on the door flap in such a way so that the kick would (and did) cause the flap to slam on JD's hands.

In addition, we agree with the Hearing Officer's conclusion that no force at all was necessary under the circumstances, let alone a use of force was that reasonably certain to result in injury to JD. At the time that Appellant kicked the door, JD was locked in his cell, was not throwing anything, was not reaching for Appellant and was not a threat to anyone else. The fact that JD could swing his arm through the flap is simply not evidence that JD presented a sufficient security risk to warrant the kicking and violent slamming of the flap on JD's hands. And the Hearing Officer's rationale for rejecting Appellant's claim of necessity is compelling. If Appellant needed to kick to door to get JD to back away from the flap, there would have been no reason for Appellant to walk away from the door without securing the flap, as he did. We believe there is substantial evidence in the record to support the Hearing Officer's conclusion that Appellant kicked the door at a time when JD's hands were in a vulnerable position and that this use of force was unnecessary, inappropriate and violative of the Agency's use of force policy.

We also believe the record supports the Hearing Officer's findings and conclusions that Appellant committed deceptive acts in violation of Agency rules and regulations and that he committed acts of dishonesty in violation of Career Service rules in connection with this incident and the Agency's investigation of the incident. There is evidence in the record supporting the Hearing Officer's findings that Appellant was dishonest when he misrepresented the positioning of JD's hands when he delivered the kick to the cell door. The Hearing Officer reasonably found this misrepresentation to be significant, since it tended to minimize the risk of injury to JD when Appellant delivered the blow to the door. The Hearing Officer, as noted above, also found Appellant's rationale for kicking the door (the need for getting JD to back away from the cell door) to be untruthful. These untruthful statements were contained in a statement Appellant wrote during the investigation of the incident.

In addition, the Hearing Officer concluded that Appellant's failure, twice, to mention to his supervisor that he used force in kicking the cell door was more likely than not intentional, especially in light of his obligation to report all uses of force. Appellant's failure to report his use of force, or more properly, Appellant's intentional omission of his use of force on two occasions when reporting back to his supervisor concerning the incident, constituted additional instances of deceptive acts.

Finally, we find no error in the Hearing Officer's conclusions supporting the Agency's termination of Appellant. If there is one policy that this Agency has made both crystal clear and

enforced consistently, it is that the commission of deceptive acts during the course of an investigation into allegations of misconduct will result in termination. The record supports the Hearing Officer's conclusions that Appellant used unnecessary and inappropriate force against a mentally impaired inmate and then lied about that use of force to his superiors and to investigators. The penalty of discharge is plainly not excessive and in this case, is most certainly warranted. Consequently, the Hearing Officer's decision is AFFIRMED.

SO ORDERED by the Board on February 16, 2017, and documented this 18th day of May, 2017.

BY THE BOARD:



Co-Chair

Board Members Concurring:

Neil Peck

Patricia Barela Rivera