

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

Appeal No. 16-16A

DECISION AND ORDER

IN THE MATTER OF THE APPEAL OF:

RICHARD SAWYER,

Respondent/Appellant,

vs.

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

Petitioner/Agency.

Denver Deputy Sheriffs are permitted to work off duty in secondary employment in security-type positions. In working these positions, they are permitted to wear their work uniforms. They are permitted to carry a weapon. To the untrained eye, they would appear to be police officers. But they are not police officers; and the deputies know, or should know this. Pursuant to Denver Sheriff Department Departmental Order 2000.11 14 (E)(1) and (2), when working off duty, deputies are prohibited from engaging in "general patrol duties" and "general investigative duties."

On November 29, 2104, Denver Deputy Sheriff Richard Sawyer (Appellant) was working off duty at a Denny's restaurant. At 1:00 a.m. two women and a man entered the restaurant. A few minutes later, a group of six entered the restaurant. On the way to their table, members of the two groups exchanged words. Shortly thereafter, a member of the group of six attacked one of the group of three and a fight broke out. Appellant noticed the commotion and attempted to break up the fight by inserting himself between the two combatants. This initial attempt was unsuccessful. Appellant then attempted to restrain the instigator which resulted in both Appellant and the instigator struggling on the floor of the restaurant. The instigator eventually broke free of Appellant and fled out the door, with Appellant in pursuit.

Appellant caught up with the instigator and attempted to place him in hand cuffs, but he noticed a group of people approaching him. Appellant backed off from the instigator and the instigator fled.

Appellant then went back inside the restaurant to determine whether one of the members of the party of three actually had a gun, as alleged by someone in the crowd assembled outside. Appellant went back into the restaurant, and determined that the person did not, in fact, have a gun. Appellant then reviewed the restaurant's security camera footage.

Appellant next questioned a woman who had been with the group of six. While she denied any involvement in the disturbance, Appellant informed her that he was detaining her until the police could arrive on the scene. He handcuffed the woman and called the police. The woman was handcuffed and prohibited from leaving the restaurant for sixteen minutes until the police arrived.

The Denver Sheriff Department (Agency) investigated Appellant's actions which resulted in Appellant receiving a 10-day disciplinary suspension. Appellant appealed that suspension to a hearing officer. The Hearing Officer affirmed the disciplinary action.

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

Appellant first argues that the Hearing Officer erred in interpreting several "procedural rules."¹ One of these alleged procedural irregularities is the time it took the Agency to prosecute this disciplinary action. The incident at Denny's occurred at the end of November, 2014. A contemplation of discipline letter was issued by the Agency to Appellant on May 8, 2015. The duration of the investigative process in this case does not offer us reason to disturb the Hearing Officer's decision.

Appellant also claims that he did not receive adequate notice that he was being disciplined for engaging in investigative actions. Appellant is incorrect. His contemplation of discipline letter plainly and specifically advised him that the Agency believed he had violated the departmental order (D.O.) which prohibits him from engaging in "general investigative duties."

We reject the remaining procedural concerns raised by Appellant in his brief. None of those alleged irregularities had any impact on whether Appellant had committed the rules infractions charged by the Agency and none of those alleged irregularities prevented Appellant from receiving a full and fair hearing; Appellant received all the process to which he was entitled and his hearing was full and fair in every respect. Accordingly, we need address them no further than to say that even if they had occurred, they would not move us to overturn the Hearing Officer's decision. *See, e.g., In Re Franklin Gale*, No. 01-15A, note 8.

Appellant next claims that the Hearing Officer misinterpreted Agency Departmental Order 2000.11. We disagree. We find the Hearing Officer's interpretation of the order reasonable as supported by the plain language of the D.O.

In addition, we agree with the Agency that even should we adopt the interpretation of this D.O. offered by Appellant, that is, that the D.O. prohibits a deputy from "putting on the hat" of a police officer, we would find this to be functionally equivalent of the Hearing Officer's

¹ Appellant's brief, top of page 9.

interpretation. We would find further that the record contains facts supporting the Hearing Officer's determination that Appellant violated this D.O..

Specifically, the Hearing Officer found that Appellant engaged in eight separate acts which violated the D.O.. Those acts were:

- Appellant told IAB he was not aware of S.M.'s (the person he handcuffed and prohibited from leaving the restaurant until the police arrived) involvement in the assault of E.R.(one of the persons in the original group of three) but wanted to detain her for "an investigatory" regarding the assault';
- Appellant confronted, handcuffed, and questioned S.M. about the assailant (instigator) and her connection to him. Appellant kept S.M. handcuffed for 16 minutes until DPD arrived. She was not free to leave during that time. There was no indication that S.M. committed a crime or was about to commit a crime, either of which may have provided Appellant cause to detain S.M. to question her under this rule;
- Appellant pursued the assailant (instigator) outside: Appellant attempted to handcuff the assailant (instigator);
- Appellant confronted E.R. and conducted a pat-search for weapons;²
- Appellant asked Denny's manager to review the security recordings;
- Appellant reviewed the Denny's security recordings and did not contact DPD;³ and
- Appellant asked E.R. if he wished to press charges against the assailant (instigator).

We agree with the Hearing Officer that each of these actions violated the D.O. prohibiting deputies from engaging in general investigative duties. Since we also hold that the findings by the Hearing Officer are supported by record evidence, we reject Appellant's claim that we must overturn the Hearing Officer's decision for insufficiency of evidence.

Appellant also claims that we should overturn the Hearing Officer based on policy considerations. But we do not believe the policy prohibiting deputies from acting in the capacity of police officers (absent exigent circumstances which were not present in this case), that is, engaging in general investigative or patrol duties, is a bad policy. Until we see a change in the Denver City Charter which merges the Police Department and Sheriff Department insuring that everyone receives the same training and the same law enforcement authority, we will assume that the job of police officer is separate and distinct from that of deputy sheriff and that Sheriff Department policies defining and enforcing those distinctions are both desirable and reasonable.

² At hearing, in response to the question whether he returned to investigate if E.R. had a weapon, Appellant answered "yes."

³ At hearing, when asked why he did not wait for DPD to do that, Appellant replied "I don't have an answer to that."

Finally, Appellant claims that the discipline against him should have been dismissed on jurisdictional grounds, citing to our Rule 19-61(E). This Rule states that grounds for reversing a hearing officer include:

E. Lack of jurisdiction: The Hearing Officer does not have jurisdiction over the appeal. A party may file an interlocutory appeal on this ground and if such interlocutory appeal is filed, the appeal before the Hearing Officer shall be stayed until the Board decides the interlocutory appeal.

We do not believe however, that this is the argument Appellant intended to make. If the Hearing Officer did not have jurisdiction over the appeal, Appellant could not have challenged his discipline in the first instance. What we believe Appellant actually intended to argue was that the Agency lacked the authority to discipline him for off duty conduct.

Despite Appellant's insistence to the contrary, the Board did indeed decide this precise issue in *In Re Strauch*, No. 40-13A.⁴ We see no appreciable difference between the circumstances in *Strauch* and those presented here. The Agency had the authority to discipline Appellant for conduct, committed off-duty, which violated Agency rules.

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

SO ORDERED by the Board on November 3, 2016, and documented this 16th day of February, 2017.

BY THE BOARD:



Gina Casias
Co-Chair

⁴ Affirmed by the Denver District Court, no. 2014-cv-33206 (June 8, 2015).

Board Members Concurring:

Patti Klinge

Neil Peck

Derrick Fuller