

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

Appeal No. 48-14A

DECISION AND ORDER

IN THE MATTER OF THE APPEAL OF:

THOMAS FORD,

Respondent-Appellant,

vs.

DEPARTMENT OF SAFETY, DENVER SHERIFF DEPARTMENT,

and the City and County of Denver, a municipal corporation,

Petitioner-Agency.

Deputy Thomas Ford was working a photo-print station at the Denver Detention Center when a drunken prisoner seated near him started making insulting, disgusting comments directed at him and then threats, first against Deputy Ford's daughters and then against Deputy Ford personally, threatening to "kick his ass" and "fuck him up." Deputy Ford told the prisoner to pipe down or he would have to take the prisoner to an isolation cell. The prisoner responded, "fuck you, you won't come over here and tell me that shit." Deputy Ford then went over to the seated prisoner to take him to the isolation cell. As Deputy Ford got closer to the prisoner, the prisoner stood up. Believing that the prisoner was rising from his seat to make good on his threat to "fuck him up," Ford punched him in the face to ward off the perceived impending attack, sending the prisoner to the floor. The incident was captured on video monitoring.

Deputy Ford, along with his co-worker, Deputy William Lewis, assisted the prisoner off the ground and onto a bench. Deputy Ford then had another deputy notify a sergeant. Deputies Ford and Lewis then escorted the prisoner to an isolation cell. On their way, the prisoner's pants fell down and he tripped over them and fell to his knees. Deputies Ford and Lewis again helped him up and finally placed him in an isolation cell. Deputy Ford then requested a nurse on the floor to check on the prisoner. At the end of his shift, Deputy Ford wrote a report of the incident indicating that the prisoner had

approached him in an aggressive manner¹ and that he defended himself with a hand strike to the prisoner's face.

The next day, management took note of the fact that Deputy Ford had reported striking the prisoner in the face. The matter was then referred out for investigation for possible criminal and disciplinary charges.² Deputy Ford, as well as Deputy Lewis, were immediately placed on investigatory leave.

Several days later, the video of the incident was leaked. Not surprisingly, the video spawned extensive press coverage, none of which was favorable to the Sheriff's Department. Sheriff Gary Wilson³ issued a statement which referred to Deputy Ford's actions as a "disturbing inappropriate use of force."⁴

On July 17, 2014, four days after the incident, Deputy Ford was served with a notice of contemplation of discipline which scheduled a pre-disciplinary meeting for July 25. Because the criminal investigation was not yet completed, the pre-disciplinary meeting was postponed. On or about August 20, 2014, the District Attorney issued a statement indicating his office would not criminally prosecute Deputy Ford or Deputy Lewis. Deputy Ford received a second contemplation of discipline letter on August 15, 2014, which re-scheduled the pre-disciplinary conference for August 22.

Acting on behalf of the Executive Director of Safety, Shannon Elwell, the Safety Department's Civilian Review Administrator (hereafter "CRA")⁵ decided to discharge Deputy Ford. Her decision was based primarily on the belief that Deputy Ford punched the prisoner, and then while the prisoner was still on the ground, kicked and dragged him, and then roughly deposited him on a bench. The CRA further concluded that Deputy Ford punched the prisoner to punish him and retaliate against him for his offensive comments. The Agency alleged that the punch, kick and drag violated approximately fifteen different Career Service and Sheriff's Department rules and regulations⁶. CRA Elwell also

¹ This statement was not accurate.

² Part of the investigation involved speaking with the prisoner. When asked about a bruise and lacerations on his chest, the prisoner advised that he had probably received those when he fell on the Sixteenth Street Mall prior to his arrest.

³ Sheriff Wilson stepped down from his position as Sheriff one week after this incident and was eventually replaced, on an interim basis, by Elias Diggins.

⁴ Deputy Ford, in his brief, refers to the making of this comment as part of a "rush to judgment." We do not see it that way. Rather, we believe the Sheriff was being honest and admitting to what any fair minded individual would believe after viewing the punch administered by Deputy Ford; that it appeared to amount to a disturbing inappropriate use of force. The Sheriff, being a public figure, owes a duty to protect the best interests not only of his employees and his agency, but of the general public as well. He was not required to abstain from speaking merely because a formal investigation had not yet been completed.

⁵ The Hearing Officer, at page 4 of her decision, incorrectly referred to Ms. Elwell as the "Manager of Safety Executive Director." The Safety Department's Executive Director is Stephanie O'Malley.

⁶ It strikes us that the Hearing Officer, in upholding the discharge of Deputy Ford, might have been overly impressed with the sheer number of rules violations the Agency alleged and proved. We are not so impressed. We do not believe that an act of misconduct is made any more (or less) serious based on the number of rules that a single act of misconduct may have violated. The gravity of Deputy Ford's misconduct is not enhanced by the Agency's ability to plead and prove multiple rules violations, especially where, as here, the multiple rules violations were essentially nothing more than different ways of describing the same conduct. Our belief finds support in and is consistent with Section 32.8 of the Disciplinary Handbook which cautions, "[a] balanced disciplinary system should impose fair and

determined that Deputy Ford violated the Sheriff's Departmental Rule which prohibited the making of misleading or inaccurate statements (Departmental Order (D.O.) 200.4.1), but issued a thirty-day suspension for this rules violation.

Deputy Ford appealed his termination to a Hearing Officer.⁷ At hearing, Denver Police Department Sgt. James Mair (who conducted the criminal investigation of Deputy Ford's actions) testified that after viewing the video of the incident numerous times at regular and slow speeds, he could not say that Deputy Ford kicked the inmate. Similarly, Elias Diggins, who was acting Sheriff at the time of the hearing, also testified that after viewing the video, he did not believe Deputy Ford kicked the inmate. Finally, the Hearing Officer herself viewed the video and concluded Deputy Ford did not kick the inmate, did not drag the inmate, and did not forcibly deposit him on a bench. She also held that Deputy Ford did not punch the inmate for the purpose of administering punishment, but rather because he possessed a mistaken belief that the prisoner presented an imminent threat. The Hearing Officer did, nevertheless, find that Deputy Ford violated numerous rules and regulations when he improperly assumed he was going to be attacked by the inmate and then improperly responded with the punch to the inmate's face. (Hearing Officer Decision, p. 9)⁸

In determining the appropriateness of the decision to discharge Deputy Ford, the Hearing Officer found that the Agency had failed to prove that Deputy Ford would be unable to correct his conduct in the future. (Hearing Officer Decision, p. 12) Nevertheless, affording the Executive Director of Safety great deference in the determination of an appropriate punishment, the Hearing Officer upheld the decision to discharge Deputy Ford.

Deputy Ford has appealed that decision, alleging that the Hearing Officer's decision involved erroneous rules interpretation under Career Service Rule ("CSR") 19-61(B); policy setting precedent under CSR 19-61(C); and an insufficiency of evidence under CSR 19-61(D).⁹ We find our jurisdiction has been properly invoked. This case involves, at its heart, interpretation and implementation of both Agency and Career Service Rules, as well as policy considerations with precedential implications extending beyond this case.

This case forces us to examine several of the guiding principles upon which this Board has decided disciplinary appeals. We have stated on numerous occasions that our system of discipline, that is, the system administered by this Board, is not a comparative discipline system. This puts it in contrast to the system administered by the Denver Civil Service Commission, which, by virtue of language in the City Charter¹⁰, operates in a

appropriate discipline based upon the nature of the misconduct and not simply upon the number of rule violations that could arguably be charged and sustained."

⁷ Deputy Lewis also appealed his termination. The two appeals were consolidated for hearing.

⁸ We agree with the Hearing Officer that the Agency did, in fact, prove the alleged rules violations.

⁹ We reject the argument that the Hearing Officer's decision was unsupported by evidence. The lacking evidence, as argued by Deputy Ford, is the CRA's conclusions that Deputy Ford kicked and dragged the inmate and that Deputy Ford punched the inmate to punish him. While we agree that the CRA's conclusions were unsupported by evidence, the record reveals that the Hearing Officer also believed that the record did not support the CRA's conclusions. In other words, the Hearing Officer, in fact, ruled correctly on these issues.

¹⁰ Denver City Charter Section 9.4.15(F)(d).

manner, more or less requiring comparability in the imposition of discipline. This difference has been explicitly acknowledged by language in the Sheriff Department's Disciplinary Handbook. The Handbook specifically disclaims any notion that the imposition or operation of the Sheriff Department's Disciplinary Matrix transforms the disciplinary system into a comparative system¹¹. And that is certainly true. The Handbook does not change the City Charter and it does not add to or subtract from Career Service Rules; the Handbook does not afford employees any additional legal or appellate rights under our rules.

But we must acknowledge the fact that one of the chief goals of the Matrix is the attainment of consistent discipline. The Policy Statement on the front page of the Disciplinary Handbook recognizes the need for reasonably consistent discipline. The theme of consistent discipline is carried throughout the Handbook¹². In fact, it would seem that one of the chief purposes of the Matrix is to provide consistent discipline and give notice regarding potential discipline. The operation of the Matrix, by its very essence, seeks to provide reasonable and consistent punishment to all under similar circumstances. Regardless of any disclaimer, then, the Matrix pushes the Sheriff's discipline system very much in the direction of a comparative discipline system. In practice, comparative discipline and consistent discipline appear to us to present a distinction without an appreciable difference.

Unlike the Denver Police Department or the Denver Fire Department, the Sheriff's Department is free to turn away from its journey to comparability. It could, for example, abandon its Matrix¹³. That not having been done, discipline that fails to meet the Matrix's stated goal of reasonable consistency¹⁴ runs the risk of appearing arbitrary.

We have also held repeatedly that we will sustain the imposition of discipline where the discipline imposed is within the range of alternatives available to a reasonable and prudent administrator. In the case of the Denver Sheriff's Department, we need not hypothesize as to how a reasonable and prudent administrator might react to any given situation. This is because the Agency has created and adopted a disciplinary matrix which it employs to set the bounds of reasonableness and prudence. Accordingly, to properly analyze the instant case, we believe it necessary to review what the Agency and its Matrix have considered to be within the range of reasonable alternatives for disciplining acts of inappropriate force.

This Board has had the opportunity to review four inappropriate force cases brought by this Executive Director of Safety – all of which employed the Disciplinary

¹¹ Disciplinary Handbook, Section 3.0, n.1.

¹² Handbook Section 1.4 speaks of discipline that is "fairly administered, *reasonably consistent* and based upon Department-wide standards known and enforced by all members of the Department ..." Section 2.1 states that "The discipline system must be fairly, efficiently and *consistently* administered" Section 2.12 states that "the administration of discipline must be based upon the fair, *consistent* application of disciplinary principles ..." Section 3.0 is titled "Achieving *Reasonable Consistency* in Discipline." Section 6.4 describes the Matrix as "a system of *reasonably consistent* discipline." Section 12.2.7 states that one of the purposes of the matrix is to provide a framework for "*reasonably consistent discipline*." Section 17.2 states, "To achieve *reasonable consistency*, presumptive penalties are presumed to be reasonable and appropriate penalties that should be given."

¹³ We are not urging the Agency to do so. What we are urging is fair and consistent application of the Matrix.

¹⁴ See, e.g., Sheriff's Discipline Handbook, Section 3.0.

Matrix to arrive at the punishment administered to the employee. In Case No. 22-14A, Deputy Steven Valerio took a closed fist swing at an inmate¹⁵, then grabbed the inmate in a headlock, threw him against a wall, and then threw him onto the floor; and then, after handcuffing him, dragged him to his feet by pulling him up by the handcuffs.¹⁶ Valerio was ultimately dismissed, but not because of his use of inappropriate force. He was discharged because he lied about the incident during the investigation¹⁷. For his attack on the prisoner, Deputy Valerio was issued a 42-day suspension.¹⁸

In the case of Ned St. Germain, No. 24-14A, the employee was disciplined for an inappropriate use of force by improperly ordering the use of a Taser against an inmate. Sgt. St. Germain was issued a ten-day suspension.

Deputy Darrell Jordan was issued a ten-day suspension (Case No. 30-14A) for his use of inappropriate force against a prisoner when he shoved a prisoner three times, causing him to fall against a wall in the process. Deputy Monwell Fuller (Case No. 39-14A) chose to confront an inmate by first bumping into him twice, and then choking him while holding him against a wall. The Agency, employing the Matrix, issued Fuller a ten-day suspension.

Use of the Matrix by prior Managers of Safety has rendered similar results. In case No. 48-13, Deputy Brady Lovingier was caught on courtroom camera attacking a prisoner during a court hearing. The Agency, under Manager of Safety Alex Martinez, issued Lovingier a thirty-day suspension.¹⁹

A different Acting Manager of Safety, Ashley Kilroy, discharged Deputy Frank Kemp for use of inappropriate force and for committing deceptive acts by lying to investigators about what had happened with an inmate. Deputy Kemp poked the inmate with his finger several times, pushed the inmate against the wall with his hands at the base of the neck of the inmate for four seconds, and then gave a backhanded slap to the inmate. Manager Kilroy determined this inappropriate force to be a category F Matrix violation which carried a presumptive penalty of discharge.

Looking back, we do not see how Deputy Kemp's misconduct was so different from the misconduct committed by Deputy Fuller who received only a Matrix Category D ten-day suspension. (Kemp had his hands at the base of the inmate's neck for four seconds,

¹⁵ The Agency claimed in its pre-hearing statement Valerio actually connected with this punch. The Hearing Officer held only that Valerio took a swing at the inmate, without specifically mentioning whether Valerio's fist connected with the inmate's face.

¹⁶ This "technique" is specifically prohibited because of the high risk of injury to the prisoner.

¹⁷ Sheriff's Department internal regulations recognize that there can be varying levels of untruthfulness. In Deputy Valerio's case, he was charged with and found to have violated Departmental Order 200.4.2, Commission of a Deceptive Act, which carries a presumptive Matrix penalty of discharge. Deputy Ford, however, was charged with and found by the Hearing Officer to have violated Departmental Order 200.4.1, Misleading or Inaccurate Statements, which carries a presumptive Matrix penalty of either ten suspended days or thirty suspended days.

¹⁸ This would appear to be a Matrix Category E (30-days presumptive) aggravated level punishment.

¹⁹ This Board was sufficiently shocked at the leniency of the punishment to comment in its decision (page 2, note 5) that if such outrageous conduct warranted only a thirty-day suspension under the Matrix, the Agency might want to consider adjusting the Matrix. It appears our concerns have gone unheeded and our decision today is, in part, a product of the Agency's inaction.

while Fuller choked his inmate for eight seconds. Kemp slapped his inmate, Fuller pushed his inmate twice before choking him.) And while we do not think that Manager Kilroy was necessarily wrong in assessing Deputy Kemp's misconduct at a Matrix Category F level (indeed, we upheld the discipline in Case No. 19-13A), the disparity in discipline for very similar misconduct is both noteworthy and concerning.²⁰

We question the efficacy of the Matrix where such similar misconduct can be shoehorned into so many categories resulting in such disparate punishments. We are concerned that given the ease of categorizing any act of inappropriate force into any Matrix category, the assignment of a category has the potential of appearing arbitrary, despite the fact that the Matrix was, in part, designed to eliminate the imposition of arbitrary punishments. We also are concerned that the meaning of the Matrix and the accompanying Disciplinary Handbook (which explains how the Matrix works) varies, in some instances, significantly, based on who is in charge of the Safety Department. That said, for the last several years²¹, under the Matrix, no deputy appearing before this Board has been discharged for use of inappropriate force without also having been found to have committed deceptive acts during the course of the investigation into his actions.

Given this backdrop, we turn to the specifics of Deputy Ford's case. CRA Elwell chose to discharge Deputy Ford because she believed Deputy Ford punched, kicked, and dragged the inmate and then roughly deposited him on a bench. She also believed Deputy Ford took these actions to punish and retaliate against the inmate. In her mind, such actions amounted to Matrix Category F misconduct, that is, conduct which constitutes:

a willful and wanton disregard of department guiding principles; or involves any act which demonstrates a serious lack of the integrity, ethics or character related to a deputy sheriff's fitness to hold his or her position; or involves egregious misconduct substantially contrary to the standards of conduct reasonable expected of one whose sworn duty is to uphold the law; or involves any conduct which constitutes the failure to adhere to any condition of employment required by contract or mandated by law.²²

The presumptive penalty under the Matrix for Category F violations is discharge.

If the record of this case demonstrated Deputy Ford punched, kicked and dragged the inmate as alleged by CRA Elwell and did so to punish the inmate, we would not hesitate to call such an attack savage, conclude that Deputy Ford was not fit to serve, agree with the CRA that his misconduct amounted to Category F Matrix violations, and affirm

²⁰As for the imposition of the penalty of discharge in the Kemp case, it appeared to us that even though Manager Kilroy found both Kemp's dishonesty and his use of inappropriate force to independently warrant his discharge, she actually considered the two acts of misconduct together in deciding on the ultimate punishment. (See our decision, *supra*, page 7, note 7; *see also*, Hearing Officer's decision pages 8-9, 12-13.)

²¹ The Matrix started applying to disciplinary violations occurring on or after January 1, 2011.

²² Matrix Disciplinary Handbook, Appendix F. This Category also covers any violation of law, rule or policy which foreseeably results in death or serious bodily injury. This would not appear to be applicable to the instant case.

the Hearing Officer's and the CRA's decision to discharge Deputy Ford. But that is not the state of this record.

As noted above, the Police Officer investigating this incident concluded there was no kick and no drag and stated so at the hearing, under oath. The Interim Sheriff also concluded there was no kick and no drag and also testified as to this belief under oath. The Hearing Officer herself, after hearing the testimony and reviewing the video concluded there was no kick and no drag. The Hearing Officer found the CRA's belief about the incident insufficient to prove the incident occurred as she had alleged.²³ This finding by the Hearing Officer is plainly supported by record evidence. In addition, the Hearing Officer made a finding that Deputy Ford did not punch the prisoner out of a desire to punish him, but rather as a result of a mistaken belief that an attack against him by the inmate was imminent. Consequently, we need not decide whether Deputy Ford deserved to be discharged for punching, kicking and dragging the inmate for the purpose of punishment and retaliation. Rather, we must decide whether discharging Deputy Ford for punching the inmate, and only punching the inmate, based on a mistaken, albeit unreasonable belief that an attack was imminent, is within the range of alternatives available to a reasonable and prudent administrator. Given the terms of the Matrix, and given this Executive Director's (as well as the others') interpretation of the Matrix, we hold that it is not.

We look at what has transpired in cases before this one, and we look at this case, and we simply do not believe this case can properly be classified as a Category F violation warranting discharge. If this case can be a Category F case, then all of the other cases coming before could have been category F cases, though they were deemed to be something less. And if eight seconds of choking an inmate (Fuller) was only a Category D violation²⁴, then certainly this case just as easily could have been determined to be a Category D offense. Similarly, we do not see why Deputy Ford's use of inappropriate force could not have been classified as a Matrix Category E violation, that is, one which "involves the serious abuse or misuse of authority, unethical behavior, or an act that results in an actual serious and adverse impact on deputy sheriff, employee or public safety or the professionalism of the department," just as Brady Lovingier's or Steven Valerio's actions were categorized.²⁵

It appears to us, then, that any act of inappropriate force could "properly" be determined to fit into almost any Matrix category. The CRA need only say the appropriate

²³ The CRA based her conclusions, in part, on her belief that the bruises and lacerations noted on the inmate were consistent with them being the result having been made by Deputy Ford kicking and dragging the inmate during the incident. While we have not questioned the CRA's legal credentials (see *Fuller, supra*, No. 39-14A, p.3, n. 3) we have serious concerns about her qualifications to opine in the area of forensic medicine.

²⁴ 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 demonstrable serious risk to the deputy sheriff, employee or public safety."

²⁵ Lovingier became an overnight media sensation. His courtroom attack on a prisoner was captured on video, with sound, and was played by every major (and a few minor) Denver news outlets. The video has over 5,000 hits on YouTube. Despite the massive amount of negative publicity generated by this act of misconduct, Lovingier was not charged with a Matrix Category F violation for either inappropriate force or conduct prejudicial (one of the charges brought against Deputy Ford by the CRA which she believed warranted his discharge).

magic words, that is, recite the wording defining the matrix category, opine that the inappropriate force fits into that category, and ride on the coattails of the discretion afforded her to mete out a ten-day suspension, a thirty-day suspension, or even a discharge.

It should not be forgotten that all our prior cases have dealt with serious acts of misconduct; chokes, punches, slams into walls, Tasers. We have not dealt with deputies subjecting inmates to minor physical indignities. Every inappropriate choke, every inappropriate punch, every inappropriate slam into a wall which violates rules prohibiting use of inappropriate force potentially calls into question the deputy's fitness to hold his position. We consider every such act egregious misconduct, that is, they all look as if they could qualify as Category F violations. On the other hand, all of these prior cases also appeared to involve or entail the serious abuse or misuse of authority, or acts that resulted in an actual serious and adverse impact on deputy sheriffs, employees or public safety or the professionalism of the department. As such, they all also appear to be Category E violations. We are equally certain that all of these uses of inappropriate force are contrary to the guiding principles of the department or substantially interfere with its mission, operations or professional image, or involve a demonstrable serious risk to the deputy sheriff, employee or public safety. As such, they also appear to be Category D violations. We cannot discern why one case has "properly" been categorized as a Category D offense while other cases exhibiting extremely similar facts or severity have been "properly" categorized as Category E or F offenses.

We are not saying that a deputy could not properly be discharged for a single instance of excessive or inappropriate force. We are saying, however, that based on the matters that have come before us, this is plainly NOT the policy of the Denver Sheriff's Department or the City's Department of Safety.

The agency may very well adopt alternate disciplinary policies for the use of inappropriate force against inmates. It has not done so. Rather, using the Disciplinary Matrix and Handbook, the agency is issuing ten day suspensions, thirty day suspensions, forty-two-day suspensions and discharges, all for acts that appear to be of comparable severity.

We are aware of no other Deputy who has been discharged for a single non-lethal use of inappropriate force who has also not been found to have committed deceptive acts. After reviewing the record in this case, we can discern no appreciable distinction between this case and other cases we have decided. Accordingly, we conclude the Hearing Officer erred in finding that discharge was within the range of alternatives available to a reasonable and prudent administrator operating under the Disciplinary Matrix and Handbook. We find the penalty of discharge, in this case, based on these facts, to be clearly excessive.

In addition, we give more import to the Hearing Officer's finding that Deputy Ford was capable of correcting his conduct in the future than did the Hearing Officer. While the Career Service disciplinary system may not be a comparative disciplinary system, it most certainly is a progressive discipline system. The first sentence of CSR 16-20 states, "[t]he purpose of discipline is to correct inappropriate behavior or performance, if

possible. CSR 16-50(A)(1) states, “[w]henver practicable, discipline shall be progressive.” In this case, the Hearing Officer found that Deputy Ford was, indeed, capable of correcting his behavior. As we have stated above, despite the serious nature of Deputy Ford’s misconduct, this record presents us with no justification for treating this case differently from the preceding five cases. If progressive discipline was practicable in those cases, it is practicable in this case. This Board takes the concept of progressive discipline seriously. The Hearing Officer erred by failing to properly consider and implement progressive discipline.²⁶

Finally, we acknowledge that we have also held (*In the Appeal of Deanna Gordon*, No. 10-14A, p.2) that neither our Hearing Officers nor this Board are bound by the Matrix. Our decision today does nothing to change that. We choose to follow the Matrix, that is, we choose to impose a penalty consistent with the Matrix, because that is the reasonable expectation resulting from the Agency’s voluntary implementation of the Matrix. And while we have similarly held that the Agency itself is not required to follow every twist and turn in the Matrix and Handbook, or answer every question posed by the Handbook, or strictly adhere to every suggestion or statement made in the Matrix so long as discipline imposed is consistent with the guiding principles espoused in the Matrix (*see, e.g., Deanna Gordon, supra*, p. 2, n.1), in this case, it appears to us as if those guiding principles were not followed.

Accordingly, we MODIFY the Hearing Officer’s decision as follows:

- 1) Regarding the rules violations attendant with Deputy Ford having made Misleading or Inaccurate Statements in violation of Departmental Order 200.4.1; because the imposition of the original 30-day (Matrix Category E) suspension was based, in part on considerations which the Hearing Officer determined did not occur, we classify this violation as a Category D offense and impose a ten-day suspension without pay.
- 2) For each and every other rules violation found by the Hearing Officer concerning Deputy Ford’s use of inappropriate force; we classify all of those violations as Matrix Category E violations and impose thirty day suspensions without pay; all to run concurrently.

²⁶ CSR 16-20 also states that an employee’s past disciplinary history should be taken into account when an agency is deciding on the appropriate level of discipline. Within the context of the Sheriff’s Matrix, a deputy’s work history can be a factor in favor of mitigating a presumptive penalty. For example, Handbook Section 19.6.6 lists prior positive evaluations as a potential mitigating factor. This record revealed that Deputy Ford had excellent work evaluations. Handbook Section 19.6.7 lists a lack of prior disciplinary history as a potential mitigating factor. The record reveals that over a seven-year career with the Sheriff’s Department, Deputy Ford was not disciplined at all. We believe these factors support our decision that progressive discipline is appropriate in this case. CRA Elwell also claimed to have considered these mitigating factors but deemed them insufficiently weighty to persuade her to impose a mitigated penalty. We are left wondering whether the “promise” of mitigation, in the context of the Matrix, is illusory. While Section 19 of the Handbook lists numerous mitigating factors, and while the Handbook requires management to actually consider mitigating factors, the Handbook, itself (Section 19.5) disclaims any requirement that mitigation actually be imposed. If our recollection is correct, the next time this Board reviews the imposition of a mitigated penalty will be the first time.

- 3) Deputy Ford is ordered reinstated to his position as a Denver Deputy Sheriff and shall be made whole by the Agency for all lost wages and benefits (including those associated with his time in service), save for the forty suspended days.

SO ORDERED by the Board on September 17, 2015, and documented this 17th day of December, 2015.

BY THE BOARD:



Chair (or Co-Chair)

Board Members Concurring:

Gina Casias (Co-Chair)

Patti Klinge

Derrick Fuller

Neil Peck