

ORDER DISMISSING APPEAL

IN THE MATTER OF THE APPEAL OF:

MARK GERGANOFF,
Appellant,

vs.

DEPARTMENT OF LAW, MUNICIPAL OPERATIONS SECTION,
and the City and County of Denver, a municipal corporation, Agency.

I issued an order on December 30, 2008 which directed the Appellant to show cause why his appeal should not be dismissed for lack of jurisdiction over his claim of discrimination under Colorado Revised Statute (CRS) 24-34-402.5, and for lack of jurisdiction over his retaliation claim under the City's Whistleblower Protection Ordinance. The Appellant responded on January 22, 2009. The Agency replied on January 28, 2009. I have considered both filings, the file, and pertinent authority. I incorporate my findings from my Order to Show Cause, and now find and order as follows.

The Appellant claims the Hearing Office has jurisdiction over his discrimination claim under Colorado Revised Statute 24-34-402.5. His arguments are unpersuasive. The Career Service Board was clear in stating discrimination claims under CRS 24-34-402.5 "are not actions subject of career service appeal, and for this reason, the Hearing Officer lacked jurisdiction to hear Appellants' [discrimination] claims." In re White and Watson, Appeal ## 63-06, 64-06, 6 (5/18/07). In addition, by its own terms, CRS § 24-34-402.5 designates the district court as the sole forum to hear claims brought under it. The Appellant has failed to state a claim for jurisdiction under CRS § 24-34-402.5.

Next, the Appellant argues the Hearing Office has jurisdiction over his whistleblower claim. In my order to show cause, I questioned whether the Appellant stated a required element under the ordinance, that of reporting illegal activity or other form of official misconduct. The Appellant responded the City's position - supporting Jefferson County's determination that costs should not be assessed in property valuation disputes - is official misconduct under the ordinance. Even in the light most favorable to the Appellant it is difficult to see how the City's support for Jefferson County could be deemed official misconduct.


"Official misconduct" means any act or omission by any officer or employee of the City and County of Denver that constitutes (1) a violation of law, (2) a

violation of any applicable rule, regulation or executive order, (3) a violation of the code of ethics . . . or any other applicable ethical rules and standards, (4) the misuse, misallocation, mismanagement or waste of any city funds or other city assets, or (5) an abuse of official authority.” D.R.M.C. § 2-107 (d).

Since the Appellant’s complaint is that the Jefferson County Board of Assessment’s denial of his costs was illegal, he failed to state an act or omission by any Denver officer or employee that was illegal, unethical, or abusive of City funds or official authority. The Agency’s support for Jefferson County’s position, which is not yet litigated, cannot be deemed official misconduct under the ordinance.

The Appellant has failed to state a jurisdictional basis for his appeal. The Order to Show Cause is therefore made final, and the Appellant’s appeal is DISMISSED WITH PREJUDICE for lack of jurisdiction.

DONE January 30, 2009.



Bruce A. Plotkin
Bruce A. Plotkin
Career Service Hearing Officer