

**HEARING OFFICER, CAREER SERVICE BOARD
CITY AND COUNTY OF DENVER, COLORADO**
Appeal No. 102-09

ORDER

IN THE MATTER OF THE APPEAL OF:

RAECHEL ANDERSON, Appellant,

vs.

OFFICE OF ECONOMIC DEVELOPMENT,
and the City and County of Denver, a municipal corporation, Agency.

The Agency filed a motion to dismiss this appeal on jurisdictional grounds. Appellant timely responded to the motion.

Background

This is a pro se appeal of a grievance alleging that the Agency's violation of the rule governing FMLA leave requests resulted in Appellant's loss of 66.5 hours of pay.

The Agency asserts that jurisdiction is absent because 1) Appellant used a complaint form rather than a grievance form, 2) the grievance was untimely, and 3) the actions complained on – errors in Appellant's leave request – were committed by an employee in another agency, and are therefore not grievable under Rule 18.

Appellant argues in response that 1) the rules themselves and CSA created her confusion as to which form she should use; 2) she was not notified of the hours of pay she actually lost until Oct. 21, 2009, and therefore her appeal was timely; and 3) the appointing authority delegated the power to make leave decisions to Ms. Gallegos, the employee whose errors caused the pay loss.

Analysis

Appellant bears the burden of demonstrating subject matter jurisdiction in response to a motion to dismiss. Dismissal is inappropriate where a fair reading of an appeal makes the basis for jurisdiction apparent. In re Bane, CSA 82-09, 2 (Order 10/26/09), *citing* In re Williams, CSA 53-08 (Order 8/18/08). Where matters outside the pleadings are presented, the motion is treated as one of summary judgment, presenting the issue of whether there are genuine issues of material fact requiring a trial. C.R.Civ.P. Rules 12(c); 56.

The motion to dismiss raises factual issues beyond the allegations contained in the appeal, and therefore the motion is treated as one of summary judgment.

As to the first issue, Appellant's use of a complaint rather than a grievance form, it appears from the documents attached to the pleadings that the complaint clearly raised a rule violation, and that it was accepted as such by the Agency in its response, which informed Appellant of her right to appeal their action declining to resolve the issue in her favor. Use of a complaint form to raise an issue grievable under Rule 18 does not deprive an employee of the remedy of an appeal where the form gave the Agency notice of the issue raised, and the Agency itself treated the issue as an appealable grievance.

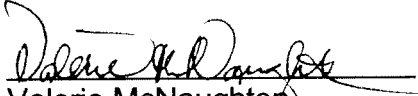
The Agency next asserts that the appeal was filed untimely. However, the parties present conflicting facts as to when Appellant should be charged with notice of the facts which form the basis of her appeal. Therefore, the matter is not subject to dismissal without a hearing.

Finally, the Agency asserts that the issue was not grievable under CSR § 18-10 C, since the person who made the mistakes at issue was not Appellant's supervisor or manager. Appellant responds that her Agency delegated its authority to take action on leave issues to Ms. Gallegos. Again, a factual dispute prevents the granting of summary judgment on this issue.

Order

Based on the foregoing findings, the Agency's motion to dismiss is denied.

Done this 8th day of January, 2010.


Valerie McNaughton
Career Service Hearing Officer

I certify that on Jan. 8, 2010, a copy of this Order was delivered to the following in the manner indicated: