

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

Appeal No. 127-05

DECISION

IN THE MATTER OF THE APPEAL OF:

STANLEY CONWAY,
Appellant,

vs.

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

I. INTRODUCTION.

The Appellant, Sgt. Stanley Conway is a deputy at the Denver Sheriff's Department (the Agency). He appeals the denial of his grievance concerning his transfer, effective October 23, 2005. Pursuant to then-current Career Service Rules, the Appellant filed his first-level grievance on October 15, 2005. That grievance was denied by Capt. Kopylov on October 20, 2005. The Appellant submitted his second-level grievance to Undersheriff Fred Oliva on October 27, 2005. Oliva denied that grievance on November 4, 2005. This appeal followed on November 10, 2005. The grievances, responses and appeal were filed timely.

A hearing concerning the appeal was conducted on February 13, 2006 by Bruce A. Plotkin, Hearings Officer. The Appellant appeared *pro se*. The Agency was represented by Robert A. Wolf, Assistant City Attorney, with Chief Walt Smith present as advisory witness. The Appellant testified on his own behalf. The Appellant carried the burden of production to advance his claims.

II. ISSUES

Three issues were presented for appeal:

- A. whether the Appellant's October 23, 2005 transfer was an adverse Agency action;
- B. if so, whether the Appellant's transfer was unlawfully discriminatory or retaliatory;

C. if so, whether the Hearings Officer is empowered to grant the remedies requested.

After the Appellant's case-in-chief, the Agency moved to dismiss the Appellant's claims. The Hearings Officer ruled as follows.

Both the Appellant's claims require he establish the Agency took some adverse action against him. In re Cobb, CSA 163-03 (2/5/04)(discrimination), In re Green, CSA 130-04, 4 (1/7/05)(retaliation), so the initial question to resolve is whether his transfer was an adverse Agency action.

III. FINDINGS

1. Discrimination and Retaliation Claims.

The Appellant acknowledged his transfer did not result in a demotion, change in pay, or substantially alter his working conditions, other than his belief that his talents were not being properly used, and that his duties were less burdensome than before the transfer. [Appellant cross-examination]. Therefore, even taken in the light most favorable to the Appellant, he failed to establish a prima facie case for either of his claims. See Cobb, and Green, *supra*.

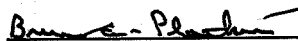
2. Remedies Requested.

The Appellant requested the following relief: "change of current policies or adherence to policy" and "change of current staffing and Building conditions." Even if the Appellant had prevailed as to his claims, the Hearings Officer is without jurisdiction to grant the requested remedies. In other words, even if the Agency discriminated and retaliated against the Appellant for complaining there were insufficient deputies assigned to the Denver Health Medical Center and clinics where inmates are seen, the Hearings Officer is not empowered to order the Agency to change staffing or building conditions.

IV. ORDER

For both the above-stated reasons, failure to establish a prima facie case, and failure to state a claim upon which the Hearings Officer may grant relief, the Appellant's claims cannot prevail, and therefore, the Hearings Officer granted the Agency's motion, and ordered this appeal DISMISSED WITH PREJUDICE.

DONE this 13th day of February, 2006.



Bruce A. Plotkin
Hearings Officer
Career Service Board

CERTIFICATE OF MAILING

I certify I have forwarded a correct copy of the foregoing **DECISION**, by depositing it in the U.S. mail, postage prepaid, this 13th day of February, 2006, addressed to:

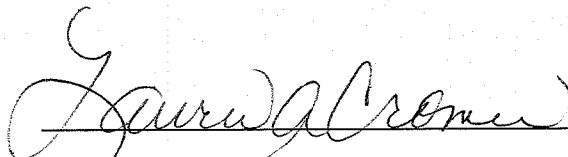
Sgt. Stanley Conway
2561 Birch Street
Denver, CO 80202

I further certify I have forwarded a correct copy of the foregoing **DECISION**, by depositing it in interoffice mail this 13th day of February, 2006, addressed to:

Robert A. Wolf, Esq.
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201 West Colfax Avenue Dept. 1108
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Deputy Alvin J. LaCabe, Jr.
Department of Safety

Fred J. Oliva, Undersheriff
Denver Sheriff Department

A handwritten signature in cursive script, appearing to read "Laura A. Cronin", written over a horizontal line.