

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

Appeal No. 28-06

ORDER DISMISSING APPEAL

IN THE MATTER OF THE APPEAL OF:

GREGORY D. COOLEY,
Appellant,

vs.

DENVER DEPARTMENT OF HUMAN SERVICES,
Agency,
and the City and County of Denver, a municipal corporation.

The Agency filed its "Motion to Compel Discovery Responses" on May 25, 2006, and its "Motion to Dismiss" on May 30, 2006. The Appellant did not respond to either motion within the allotted time. Therefore, having considered the Agency's Motions, and being otherwise informed in these matters, the Hearings Officer finds and Orders as follows.

I. Motion to Dismiss.

The Agency advances three arguments in favor of its Motion to Dismiss: Failure to meet jurisdictional filing prerequisites; remedies which are either outside the jurisdiction of the Hearings Officer or moot; and "the Appellant cannot meet his burden to prove that he was discriminated against on the basis of his race."

A. Jurisdictional filing prerequisites.

The Agency states the Appellant is a probationary employee. The Appellant's filing documents agree. [Agency Motion and Appellant Appeal]. Upon termination of a probationary employee's employment, the employee's right to appeal is limited to a complaint of unlawful discrimination, since cause is not otherwise required. Career Service Rules (CSR) 14-30, 5-61. In addition, CSR 19-10 D. states "[a] Career Service employee who does not hold career status may only appeal pursuant to 19-10 B-1 or 2." Those rules require the probationary employee to file a complaint of discrimination with a supervisor or agency manager, then, only after an unfavorable disposition of the complaint, file an appeal to the hearings office. The Agency states neither prerequisite was accomplished, and because the Appellant has failed to respond, the Hearings Officer must take the Agency's averments as true. Thus, the Appellant has failed to comply with

the prerequisites contained in CSR 19-10 B. 1 and 2.

B. Hearings Officer's jurisdiction to grant the relief sought by the Appellant.

The Agency states the only relief sought by the Appellant is (1) to request a meeting, (2) to counsel with superiors, and to request a written document. [Agency Motion and Appellant's Appeal]. The Hearings Officer finds none of these requests for relief is within his power to grant; however the remedy of relief from unlawful discrimination was also raised by the Appellant. As acknowledged by the Agency above, relief from unlawful discrimination is a remedy within the Hearings Officer's jurisdiction. Little more than a brief statement of the cause of action and basis therefore is required to find a jurisdictional basis for appeal. The Appellant's statement "I was wrongly separated from Denver Department of Human Services based upon racial discrimination," [Appeal], is all that is required for the Hearings Officer to acquire subject matter jurisdiction. Therefore the Appellant has stated a request for relief that is within the Hearings Officer's power.

C. Whether the Appellant can meet his burden to prove unlawful discrimination. The Agency states the Appellant's claim is one of disparate racial treatment, and that he cannot meet his burden to prove disparate treatment since the decision maker did not know his race. The Agency pre-supposes the fact-finding outcome of the dispute, and therefore jumps the gun concerning the legal conclusion thereto.

The Appellant's failure to file a formal complaint or grievance renders his appeal not ripe for review by the Hearings Officer. Therefore the Appellant's Appeal is **DISMISSED WITHOUT PREJUDICE.**

II. The Agency's "Motion to Compel" is rendered moot by this Order.

DONE this 12th day of June, 2006.



Bruce A. Plotkin
Hearings Officer
Career Service Board

CERTIFICATE OF MAILING

I hereby certify I have forwarded a correct copy of the foregoing **ORDER DISMISSING APPEAL**, by depositing it in the U.S. mail, postage prepaid, this 12th day of June, 2006, addressed to:

Mr. Gregory D. Cooley
P.O. Box 22131
Denver, CO 80222

I further certify that I have forwarded a correct copy of the foregoing **ORDER DISMISSING APPEAL**, by depositing it in interoffice mail this 12th day of June, 2006, addressed to:

Niels Loechell, Assistant City Attorney
Denver Department of Human Services
1200 Federal Blvd. 4th Floor
Denver, CO 80204

City Attorney's Office
Litigation Section

Ms. Jennifer Fairweather
Denver Department of Human Services

