

**HEARING OFFICER, CAREER SERVICE BOARD
CITY AND COUNTY OF DENVER, COLORADO**
Appeal No. 82-07

ORDER DISMISSING APPEAL

IN THE MATTER OF THE APPEAL OF:

MICHELLE FELIX,
Appellant,

vs.

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

A prehearing conference was convened on January 30, 2008 by Bruce A. Plotkin, Hearing Officer. The Appellant appeared pro se. The Agency was represented by Assistant City Attorneys Diane Briscoe and Robert A. Wolf.


The Appellant was disqualified from employment on November 21, 2007. She filed her appeal on November 30, 2007. Based upon the Appellant's filings it appeared the Hearing Officer is without jurisdiction to grant the only relief sought in this case.

In an appropriate case, where an Appellant seeks one remedy for which the hearing officer has no jurisdiction, but another remedy, while not sought by the Appellant, but for which there is jurisdiction would afford relief under the Career Service Rules, the Hearing Officer may not dismiss the appeal for lack of jurisdiction. Rather the hearing officer must assess the possible causes of action and possible avenues of relief to afford the appellant the broadest possible relief under the Career Service Rules. However, where, as in the present case, the hearing officer is without jurisdiction to grant the only relief acceptable to the appellant, the appeal may be dismissed upon agency motion or upon the hearing officer's own motion. See In re Valdez, CSA 96-06 (11/16/06), In re Herzog, CSA 23-05 (5/26/05).

The Appellant checked her appeal form for claims of discrimination based upon race and disability, harassment based upon race, retaliation based upon filing a disability discrimination claim, and as an appeal of her grievance of October 23, 2007. She later claimed violations of employment contract, emotional pain and suffering, violation of free speech, due process, bad faith, and a whistleblowing violation. [Appellant's Amended Prehearing Statement, filed 1/22/08]. As a general matter, the hearing office has jurisdiction over discrimination, harassment, retaliation, whistleblowing, and grievance appeals under CSR 19-10 A. 1, and A. 2, but no jurisdiction over breach of contract, and pain and suffering. Constitutional claims may meet jurisdictional muster under various Career Service Rules. In this case, however, the Appellant made it clear that only one remedy would be acceptable relief for all of her claims: to change supervisors.

[Prehearing conference @ 10:57:20]. Since the hearing officer is without jurisdiction to grant the only relief that the Appellant would accept, then the Agency's motion to dismiss was granted. To do otherwise would be to invite a waste of time, since any successful claim would be left without a remedy. "If a reasonable accommodation cannot be provided or the employee rejects a reasonable accommodation, disqualification may be initiated." CSR 14-21.

Accordingly, this appeal is DISMISSED WITH PREJUDICE.



Bruce A. Plotkin
Career Service Hearing Officer

I certify that on February 14, 2008 I served a correct copy of the foregoing Order as indicated below:

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