

HEARING OFFICER, CAREER SERVICE BOARD, CITY AND COUNTY OF DENVER, STATE OF COLORADO

Appeal No. 135-02

DISMISSAL ORDER

IN THE MATTER OF THE APPEAL OF:

GLORIA F. JAMES, Appellant

v.

Agency: Denver Department of Human Services and the City and County of Denver, a municipal corporation.

Appellant filed an appeal with the Career Service Authority Hearing Officer on July 18, 2002. The Department filed a Motion to Dismiss Appeal of Reassignment and to Seal File on August 2, 2002. Appellant, through counsel, filed a Response to Motion to Dismiss on August 29, 2002. The Hearing Officer, being fully advised of the matter herein, finds as follows:

On July 2, 2002, Appellant filed a grievance against the Department's Manager, Donna Good, in which she grieved a lateral assignment that became effective the day before. Appellant alleged that she was the victim of a pattern of harassment and personal attacks for the previous three years; she did not allege that Ms. Good engaged in such conduct.

The grievance was denied and Appellant filed a Notice of Appeal with the Hearing Officer. In the Notice of Appeal, Appellant alleged violations of CSR §5-80, 15-101, *et seq.*, and claimed jurisdiction pursuant to CSR §19-10 b), c), d) and f). Appellant then added claims of retaliation and discrimination based upon race and national origin.

Appellant claims the Hearing Officer has jurisdiction under CSR §19-10 b), which covers appeals of actions of appointing authorities that result in dismissal, suspension, involuntary demotion, disqualification, layoff or involuntary retirement. However, there is nothing in the documentation submitted that shows that Appellant was dismissed, suspended, demoted involuntarily, disqualified, laid off or forced into an involuntary retirement. She is merely grieving a lateral transfer. This is not a matter that can be reached by the Hearing Officer under CSR § 19-10 b).

Discrimination claims can be raised with the Hearing Officer under two different provisions of the Rules. CSR §19-10 c) permits appeals of discriminatory action generally. CSR §19-10 f) permits appeals of harassment and discrimination complaints that have not been properly disposed of by a supervisor or other appropriate official. Appellant's appeal fails under both of these provisions.

Because the Career Service Board has seen fit to create two different provisions for appealing alleged discrimination or harassment, there must be a distinction between them. CSR §19-10 c) does not have any prerequisite other than it must be raised as an issue in the grievance below. Appellant, while making a general statement about a pattern of alleged harassment, does not provide any specific dates or names of the persons involved. Since it is axiomatic that claims must be raised in a timely manner (and under CSR §18-12, grievances must be raised within 10 days of their occurrences), the allegations of a "general pattern" of discrimination or harassment by parties unknown and at times unknown is insufficient to raise a claim under CSR §19-10 c).

Appellant's claim under CSR §19-10 f) must also fail because Appellant has not satisfied the requirements of this provision. In order to bring a claim under CSR §19-10 f), Appellant has to comply with the requirements of CSR §15-101, *et seq.* This means that Appellant had to request an investigation of the harassment and discrimination claim, either by the Department itself or by the Career Service Authority if she did not feel that the Department could conduct the investigation in an unbiased manner. See *In the Matter of the Appeal of Martha Douglas*, CSA Appeal No. 317-01. Appellant has not done this. The claim under CSR §19-10 f) must also be dismissed.

Appellant also claims a Rule violation under CSR §5-80, governing reassignments. By definition, a reassignment "in no way affects the status of the employee involved." CSR §5-82. Courts agree that transfers or reassignments are not "adverse employment actions" See *Sanchez v. Denver Public Schools*, 164 F.3d 527 (10th Cir. 1998).

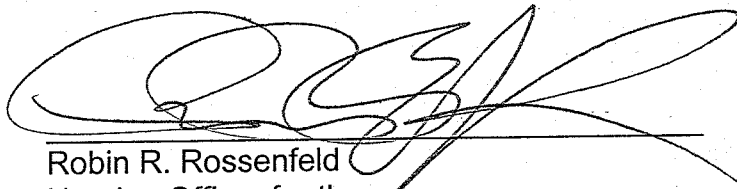
According to the information submitted by both parties, Appellant's Career Service classification has not been affected. The Hearing Officer can review the alleged violations of CSR § 5-80 only if the change in job responsibilities is not a true reassignment.

Based upon the information presented at this time, a change in Appellant's CSA classification is merely hypothetical. The Hearing Officer cannot review hypothetical claims or damages. Therefore, there is no current claim under CSR §5-80.

The appeal is, therefore, dismissed, without prejudice. Should Appellant be reclassified into a new CSA classification that affects her pay, status or tenure, she may raise the allegation that CSR §5-80 has been violated at that time. She will also have the opportunity to raise any discrimination issues based upon a continuing pattern of discrimination dating from the time of the reassignment should she feel that is a valid allegation. While normally the statute of limitations would bar the ability of a Hearing Officer to review the conduct sometime into the future, the affect of the alleged discriminatory conduct and the reassignment will not be known to the parties unless and until Appellant is reclassified downwards sometime in the future. See *In the Matter of the Appeal of Charles Smith*, CSA Appeal No. 93-02, (appeal of a non-disciplinary reassignment that resulted in a reclassification of an employee two years later).

The Department has also asked that certain records submitted by Appellant be sealed. These include copies of charges of discrimination filed with the EEOC by a Departmental employee who is not a party to this action and a grievance filed by another Departmental employee who is also not a party to this action. In the interest of these employees' privacy, the motion to seal the portion of the file that contains these documents is granted.

Dated this 10th day of January 2003

A handwritten signature in black ink, appearing to read 'RRR', is written over a horizontal line. The signature is stylized and cursive.

Robin R. Rossenfeld
Hearing Officer for the
Career Service Board

CERTIFICATE OF MAILING

I hereby certify that I have forwarded a true and correct copy of the foregoing DISMISSAL ORDER by depositing the same in the U.S. mail, this 3rd day of January 2003.

Gloria James
4132 S. Newport Way
Denver, CO 80237

Ross Goldsmith, Esq.
695 S. Colorado Blvd
Denver, CO 80246

I hereby certify that I have forwarded a true and correct copy of the foregoing DISMISSAL ORDER by depositing the same in interoffice mail, this 3rd day of January 2003.

Niels Loechell, Esq.
Assistant City Attorney
Denver Department of Human Services

Employment Law Section
Office of the City Attorney

Virginia Annals