

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

Appeal No: 23-07

ORDER OF DISMISSAL

IN THE MATTER OF THE APPEAL OF:

PETER KENT,
Appellant

vs.

DEPARTMENT OF PUBLIC WORKS, DEVELOPMENT ENGINEERING SERVICES
and the City and County of Denver, a municipal corporation,
Agency.

Appellant was ordered to show cause why this appeal should not be dismissed for lack of jurisdiction. Appellant filed a timely response to the order on May 24, 2007. The Agency did not file a response. Upon consideration of Appellant's response and submissions, the following findings and order are entered:

Appellant is a career status employee currently employed with Public Works as a land surveyor. This is an appeal of Appellant's disqualification by the Career Service Authority (CSA) from further consideration for a promotion to the position of senior land surveyor supervisor after he did not receive a passing score on a written test administered by the CSA. Appellant alleges the CSA erred in scoring the test.

In responding to the Show Cause Order, Appellant referred the Hearing Officer to previously filed attachments to his appeal. These include Examination Review Notices that Appellant requested from the CSA and submitted as evidence of error in CSA's scoring procedure. He alleges that because the CSA erred in scoring his examination, he was denied a courtesy interview for the promotion and denied the opportunity to advance within the Agency. Appellant claims that exercise of jurisdiction by an independent, unbiased party is his only recourse to rectify this outcome.

The Hearing Office is an administrative forum that hears only actions defined by the rules under which it operates. In re Lovin, CSA 27-06, 2 (5/18/06). Career Service Rule (CSR) § 19-10 sets out the types of matters that may be appealed. If the matter complained of is not one of the subjects listed there, the Hearing Officer has no jurisdiction to consider the arguments or merits of the appeal. In re Valdez, CSA 96-06, 1(11/16/06).

CSR § 19-10 A. lists actions taken by an appointing authority that are subject to challenge by a career status employee such as the Appellant. Disqualification is among the actions listed there. However, Appellant is not challenging the action of an appointing authority, which is defined in the Rules as the "municipal official designated by the annual appropriation ordinance to approve expenditures for a given appropriation." Rule 1, p.1-1. The appointing authority in this instance is Public Works-DES, but Appellant is challenging the actions of the CSA. The CSA was clearly acting as the human resource agency for the City on behalf of the Personnel Director (and not as an appointing authority) when it prepared and scored the examination that is the subject of this appeal and denied Appellant an interview. See CSR § 2-40 A.2.

A disqualification is defined in Rule 1 as "[a]n involuntary no-fault separation of an employee, or action in lieu thereof, based on a legal, physical, mental or emotional impairment or incapacity, occurring or discovered after appointment, which prevents satisfactory performance of the duties and responsibilities of the position." Such disqualifications are governed by CSR § 14 – 20 *et seq.* Appellant's response to the Show Cause Order makes it clear that he is not challenging a separation from employment, but instead indicating dissatisfaction with the results of the examination process. The appeal attachments indicate that Appellant availed himself of the opportunity to request review of the examination process under CSR § 3-37.

CSR § 19-10 A. provides no basis for a direct appeal to the Hearing Office for a challenge to the CSA's method of qualifying candidates for a promotion or scoring examinations. Therefore, this appeal is ordered to be dismissed with prejudice for lack of jurisdiction.

DONE this 31st day of May, 2007.


Valerie McNaughton
Career Service Hearing Officer

CERTIFICATE OF SERVICE

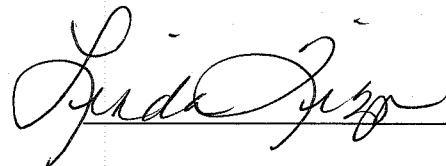
I hereby certify that I have forwarded a true and correct copy of the foregoing **ORDER OF DISMISSAL** on this 31st day of May, 2007, as indicated below:

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Linda Jupp