

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

Appeal No. 135-03

DISMISSAL ORDER

IN THE MATTER OF THE APPEAL OF:

ODILIA M. LEAL-MCINTYRE Appellant,

v.

Agency: Department of Public Safety, Denver Police Department, and the City and County of Denver, a municipal corporation.

Appellant filed her Notice of Appeal for a grievance concerning her job duties on August 15, 2003. It was unclear whether the Hearing Officer had jurisdiction to consider this matter or grant any remedy to Appellant. An Order to Show Cause was issued on September 22, 2003. Appellant responded. The Agency chose not to. Being fully advised, the Hearing Officer finds as follows:

The grievance concerns the assignment of duties within a Performance Enhancement Program. She claims that the assignment of fingerprinting duties to her PEP violates CSR §§7-13 and 7-14 because fingerprinting duties and dealing with parolees are not specifically delineated in her CSA classification description.

Career Service Rule 7 is entitled Classification and Pay Plan. It provides, in relevant part:

§7-10 Classification and Pay Plan

The Career Service Authority develops and maintains the classification and pay plan for the City and County of Denver. The plan shall cover all positions in the Career Service and some positions not in the Career Service in accordance with the City Charter and revised Municipal Code.

§7-13 Classification Factors

In classifying a position, Career Service Authority will evaluate permanent changes to essential duties that comprise a majority of work time and are most important to the position.

§7-14 Reallocation Criteria

Reallocation refers to a change in the classification of a position(s) resulting from:

- A) Gradual change of duties: A gradual change in the level of essential duties and responsibilities; or
- B) Operational change of agency: A complete or partial reorganization affecting a number of employees, significant additions of new equipment, or substantial changes in methods or procedures affecting a number of employees; or
- C) Changes in the classification plan: A classification study or maintenance review resulting changed class specifications.

Reallocation shall not be used as an alternative to promotion or a substitute for disciplinary procedure.

§7-15 Responsibility for the Establishment of Positions

The appointing authority may initiate the creation of a new position and has the responsibility to assign duties. Duty assignments may be temporary or regular, incidental or essential, and may include changes in location of work and changes in equipment and tools. The Personnel Director has responsibility for classifying positions in accordance with generally accepted personnel standards and procedures.

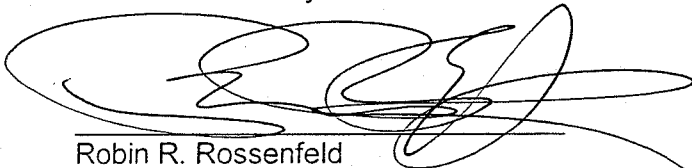
Taken as a whole, Rule 7 gives an employee the right to petition her appointing authority if the appointing authority does not request a reallocation audit after a gradual change of essential duties. The problem here is Appellant is not seeking reclassification. Instead, she is requesting that certain non-essential, incidental duties be removed from her responsibilities as set out in her PEP because they are not listed as duties within her CSA classification description. Therefore, Rule 7 does not apply to factual situation of this grievance appeal.

Appellant argues that the Hearing Officer has jurisdiction to consider this appeal under CSR §13-50, claiming that the addition of a job duty means she is challenging the "Report" not the "Program." The Hearing Officer disagrees. CSA Appeal # 134-03 is the appeal of her "Report." This case plainly is an appeal a grievance of the "Program." The Hearing Officer lacks jurisdiction to consider this case given the unambiguous language of CSR §13-50 ("An employee...may not grieve or appeal the Performance Enhancement Program, as such.").

Appellant's due process claim also lacks merit. There is no requirement that the Agency send copies of denials of grievances to an employee's counsel.

Based upon the foregoing, the case is DISMISSED with prejudice.

Dated this 19th day of November 2003.



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 U.S. mail, this 19th day of November 2003, addressed to:

Jack Kintzele, Esq.
1317 Delaware Street
Denver, CO 80204

Odilia M. Leal-McIntyre
6263 W. Flora Place
Denver, CO 80227

I further certify that I have forwarded a true and correct copy of the foregoing DISMISSAL ORDER by depositing the same in interoffice mail, this 19th day of November 2003, addressed to:

Robert Nespor, Esq.
Employment Law Section
Office of the City Attorney

Alvin J. LaCabe, Jr.
Manager of Public Safety

Linda Lambiotte
Denver Police Department

