

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

Appeal No. 27-06

ORDER

IN THE MATTER OF THE APPEAL OF:

MARK LOVIN,

Appellant,

vs.

DENVER INTERNATIONAL AIRPORT, DEPARTMENT OF AVIATION,

and the City and County of Denver, a municipal corporation,

Agency.

The Agency has moved to dismiss this appeal. Appellant responded on May 12, 2006.

This is an appeal by Appellant Mark Lovin, former Deputy Manager of Aviation Operations, of the Denver Auditor's denial of \$28,843 in pay after Appellant's resignation. The Agency asserts that (1) jurisdiction under Career Service Rules (CSR) § 19-10 is absent, (2) Appellant has no standing to appeal as a former Career Service employee, and (3) an appeal would violate the City Charter, which gives final authority over pay matters to the City Auditor. Appellant claims the Hearing Officer should exercise jurisdiction to denial of due process which would arise if Appellant could not challenge the denial of earned vacation pay.

The administrative authority of the Career Service Hearing Office is defined by City Charter and the Career Service Rules adopted "to foster and maintain a merit-based personnel system." City Charter, Art. IX, Pt. 1, §9.1.1. CSR § 19-10(A) provides no basis for a direct appeal of the amount of accrued vacation leave and compensatory time under CSR § 14-51. Likewise, Appellant has not alleged any basis of jurisdiction under § 19-10(B).

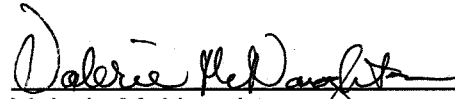
Appellant has moved to amend the caption to include the Denver City Auditor's Office, since that is the entity making the determination being appealed. However, a direct appeal may be taken only to challenge the acts of an appointing authority, which is defined in the rules as the "municipal official designated by the annual appropriation ordinance to approve expenditures for a given appropriation". CSR § 19-10(A); Rule 1, p. 1-2. Here, the Auditor was clearly acting as auditor and not as an appointing authority in determining the amount of Appellant's accrued leave. Therefore, a direct

appeal is not available to challenge that determination, even if leave was allowed to join the Auditor as a party to this appeal. That motion is therefore denied.

Next, Appellant argues that he would be denied due process if the Hearing Office does not exercise jurisdiction over this appeal. As this is not a court of general jurisdiction, but rather an administrative forum which hears only actions defined by the rules under which it operates, that argument is rejected. The absence of jurisdiction under § 19-10 moots the parties' remaining contentions.

The Agency's motion to dismiss is granted, and the appeal is hereby dismissed with prejudice based upon lack of jurisdiction.

Done this 18th day of May, 2006.


Valerie McNaughton
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 **ORDER** by depositing it in the U.S. mail, postage prepaid, this 18th day of May, 2006, addressed to:

Dolores S. Atencio, Esq.
Atencio & Antill Law Firm
455 Sherman Street, Suite 465
Denver, CO 80203

Mr. Mark Lovin
1336 South Terry Street
Longmont, CO 80501

I further certify that I have forwarded a true and correct copy of the foregoing **ORDER** by depositing it in interoffice mail this 18th day of May, 2006, addressed to:

Robert A. Wolf, Esq.
City Attorney's Office, Litigation Section
201 West Colfax Avenue Dept. 1108
Denver, CO 80202

Mr. Jim Thomas
Department of Aviation

