

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

Appeal No. 36-08

ORDER DISMISSING APPEAL

IN THE MATTER OF THE APPEAL OF:

EDWARD MAES,
Appellant,

vs.

DEPARTMENT OF SAFETY, DENVER SHERIFFS DEPARTMENT,
and the City and County of Denver, a municipal corporation, Agency.

The Agency moved to dismiss this appeal on June 2, 2008. Appellant filed a timely response. After considering the filings and applicable law, the Hearing Officer finds and orders as follows.

Appellant Edward Maes is employed by the Agency as a Deputy Sheriff. He was demoted from the position of Deputy Sheriff Captain in July 2005 pursuant to an order of the Career Service Board. Appellant seeks a reversal of the Agency's subsequent decision not to interview him for the position of Deputy Sheriff Major. The Appellant states the Agency's decision violates Career Service Rules (CSR) 3 and 16 generally, and CSR § 16-20 specifically.

The Agency bases its motion on the basis that the decision to choose which candidates to interview is entirely within its discretion so that even the facts as alleged by the Appellant fail to establish a claim for relief. The Agency also bases its motion on its claim that the Hearing Officer is without jurisdiction to grant the Appellant's requested remedy.

The following principles apply to an agency motion to dismiss prior to hearing: statements in the Appeal must be viewed in the light most favorable to the Appellant; all Appellant's assertions of material facts must be accepted as true; and the motion to dismiss must be denied unless it appears beyond doubt that the Appellant cannot prove that the acts, as he alleges them, would entitle him to relief. In re Van Dyck, CSA 143-05 (Order 2/16/06).

1. Whether the Appellant failed to state a claim for relief.

The Appellant claimed the Agency's failure to consider him for an interview for promotion violated CSR 3 in that the decision "serves to undermine the stated purpose of CSR 3 as [the failure to interview him] will prevent the Agency from promoting the best

qualified employees and ensure that the Department only promotes from a pool of applicants those with no history of discipline." [Appeal, Exhibit 1]. In essence, the Appellant argues the Agency may not consider his disciplinary history, and the Agency must deem he is among the most qualified candidates. There are no such requirements under CSR 3.

As long as the Agency's decision was not based upon a purpose which violates a Career Service Rule, such as illegal discrimination, or retaliation, it is within the Agency's province to disqualify any candidate from the selection process "for any valid reason." CSR 3-32 A. The Appellant claims no such unlawful purpose. Thus, even if the Appellant's averment is true, that the Agency disqualified him from further consideration due to his disciplinary history, it is within the Agency's discretion to do so, and that discretion does not violate CSR 3.

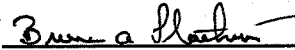
The Appellant also claimed the Agency's decision violated CSR 16 generally and CSR § 16-20 specifically. As previously stated, even if the Appellant's allegations are taken as true, there would result no violation of the stated rules.

2. Jurisdiction under CSR 19-10 A.2.b.i.

I assume here, again, for the purpose of considering the Agency's motion to dismiss, that the facts are as the Appellant alleges: the Agency chose not to interview the Appellant based, at least in part, upon his past discipline. The Appellant claims jurisdiction under CSR 19-10 A.2.b.i. The Appellant must meet two elements under this rule for me to assume jurisdiction. (1) The Appellant must allege the Agency's denial of his grievance resulted in the violation of a Career Service Rule or other listed authority. (2) The decision must impact the employee's pay, benefits, or status. It bears repeating what is at stake in this appeal. If the Appellant's claim were granted he would be entitled only to an interview. A reversal of the Agency's decision would not entitle him to a favorable outcome from such an interview. Consequently, the Agency's decision did not affect the Appellant's pay, benefits, or status.

For reasons stated herein, it appears beyond doubt that the Appellant cannot prove that the facts, as he alleges them, would entitle him to relief. Consequently, the Agency's motion is GRANTED, and this appeal is DISMISSED WITH PREJUDICE. This dismissal renders Appellant's June 12, 2008 Motion to Continue moot.

Done this 17th day of June, 2008.



Bruce A. Plotkin
Career Service Hearing Officer