

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

Appeal No. 147-03

ORDER OF DISMISSAL WITHOUT PREJUDICE

IN THE MATTER OF THE APPEAL OF:

EDWARD J. MAES, Appellant,

Agency: DEPARTMENT OF SAFETY DENVER SHERIFF'S DEPARTMENT,
and THE CITY AND COUNTY OF DENVER, a municipal corporation.

This Order concerns Appellant's Response to the Show-Cause Order the Hearing Officer entered on October 23, 2003. The Show Cause Order required Appellant to: 1) state a CSR rule violation over which the Hearing Officer has jurisdiction, and 2) request a remedy that the Hearing Officer has jurisdiction to grant (some action she can affirm, reverse, or modify, as limited under CSR 19-27).

Appellant first responded with a more detailed description of events he alleges tend to show a pattern of discrimination and harassment against him because of his membership in protected classes in violation of CSR 15-101.

However, the Hearing Officer has jurisdiction only insofar as it is specifically created under the CSR rules. Jurisdiction over CSR 15-100 *et seq.* only arises as set forth under CSR 19-10 f). CSR 19-10 f) is limited to jurisdiction over *the disposition of an investigation* conducted pursuant to CSR 15-103 through 105. Once Appellant receives documentation of such an outcome, then he may re-file his appeal on that disposition. The Hearing Officer cannot take jurisdiction over this issue until Appellant provides documentation of the outcome of such an investigation as the basis for his appeal. Until that happens, the appeal is not yet ripe for Hearings Office jurisdiction and the Hearing Officer's hands remain tied.

Appellant further responded that he has been retaliated against in violation of CSR 15-106. He then set forth the disciplinary rules under CSR 16-50 that prohibit harassment, discrimination and other relevant behaviors, presumably as an available remedy. He described the ways in which actions against him have been in violation of these disciplinary rules.

However, the Hearing Officer cannot issue discipline against anyone in the first instance. She may only review such a disciplinary action which has already been brought by an agency against an employee, then appealed by the disciplined employee

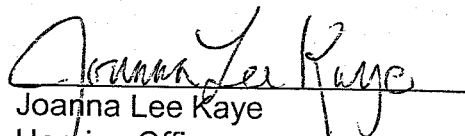
himself. And even then her jurisdictional authority to grant a remedy is limited in that she can only affirm, modify or reverse the action.

Finally, in the portion of his response to remedies, Appellant reiterated that he requests the discrimination cease, and to provide answers to several questions about his allegations. Again, the Hearing Officer can only affirm, modify or reverse an Agency action. She has no known jurisdiction or authority to direct the future behavior of other employees under the CSR rules granting Hearings Office jurisdiction, and Appellant has not shown otherwise.

ORDER

For the above reasons, this appeal is DISMISSED WITHOUT PREJUDICE. Appellant may re-file his appeal on these same issues upon the disposition of an investigation by the proper city officials under CSR 15-100, *et seq.*, within ten days of receipt of the documentation of such disposition as required under CSR 19-22.

Dated this 14th day of November, 2003.


Joanna Lee Kaye
Hearing Officer
Career Service Board

CERTIFICATE OF MAILING

I hereby certify that I have forwarded a true and correct copy of the foregoing **ORDER** by depositing same in the U.S. mail, postage prepaid, this 14th day of November, 2003, addressed to:

Michael Jackson
3590 Holly Street
Denver, CO 80207

Capt. Edward Jim Maes
PO Box 19283
Denver CO 80219

I further certify that I have forwarded a true and correct copy of the foregoing **ORDER** by depositing same in the interoffice mail, this 14th day of November, 2003, addressed to:

City Attorney's Office
Employment Law Section
201 West Colfax Avenue Dept. 1108
Denver, CO 80202

Alvin J. LaCabe, Jr.
Manager of Public Safety

F. J. Oliva
Denver Sheriff's Department

