

HEARINGS OFFICER, CAREER SERVICE BOARD, CITY AND COUNTY OF DENVER, STATE OF COLORADO

Appeal No. 176-03

ORDER DISMISSING APPEAL

IN THE MATTER OF THE APPEAL OF

JULIE A. MARTINEZ, Appellant,

vs.

OFFICE OF TELEVISION AND INTERNET SERVICES (OTIS), Agency, and the City and County of Denver, a municipal corporation,

NATURE OF APPEAL

This is the appeal of a reallocation decision of the Personnel Director. The Hearing Officer issued an Order to Show Cause why this appeal should not be dismissed for lack of jurisdiction. Both parties filed responses thereto. After review of both responses, the Hearing Officer finds and orders as follows:

BACKGROUND

At the time of the reallocation decision, Appellant Julie Martinez was an Administrative Operations Supervisor with the Office of Television and Internet Services (OTIS) of the City and County of Denver (the Agency.) The Director of her Agency submitted a Personnel Action to the Career Service Authority (CSA) that reflected a reallocation of the Appellant's position from Administrative Operations Supervisor CA0646, Grade 808, Step 11 at a pay rate of \$4422 per month, to Operations Administrator CA0915, Grade 809, Step 10 at a pay rate of \$4623 per month, which is a 4.5% increase in salary. Appeal, attachment 1.

On November 5, 2003, the Career Service Authority changed that reallocation to a step 9, the salary for which is \$4,521. That amount is a 2.25% increase from the former salary. Appeal, attachment 2.

The Appellant filed this appeal on November 14, 2003, one day after receiving the revised Personnel Form by inter-office mail. The appeal is timely under CSR 19-22 a) 1). The Appellant seeks reinstatement of the pay step first

approved by the Agency Director. The Agency argues in response to the Order to Show Cause that the Career Service Rules (CSR) do not provide a jurisdictional basis for any appeal regarding pay issues.

The Agency argues the Hearings Officer lacks jurisdiction to hear this, or any appeal regarding pay issues. The Appellant counters the Hearings Officer has jurisdiction to consider application of Career Service rules, and this appeal concerns CSA's application of CSR 9-64, not the pay plan itself. Following the jurisdictional analysis of the arguments, the Hearings Officer must determine what, if any, relief is available to the Appellant.

ANALYSIS

I. Jurisdiction

The Agency argues any decision regarding pay rates is outside of the Hearings Officer's jurisdiction, citing the Career Service Appeals cases In Re Byron West, 150-03 and 183-03, In Re Carlos Hull, 139-02, In Re Tamara Watkins, 186-00.

In West the deciding issue was whether the supervisor of the employees affected by Career Service Authority's decision to reset their pay rate had standing to appeal. Because standing was the central issue in West, that case is not applicable here. Hull is distinguished from the present case because it concerned the Appellant's request for a reclassification of his position. Classification was removed from the jurisdiction of the Hearings Officer on March 21, 2000 by amendment of the CSR rules which repealed Rule 7 in its entirety, including CSR 7-66. See also CSR 19-10, effective August 24, 2000, which eliminated 19-10 a)2) b). "Recent changes in the CSR rules have eliminated the Hearings Office jurisdiction over classification appeals." *Id* at p.4.

The Watkins case is also inapplicable. That appeal concerned the denial of a retroactive pay adjustment under CSR 9-52 after a voluntary demotion. That rule permits pay adjustments only if certain conditions are met, such as market conditions and the city's need for the applicant's unusual qualifications. The Watkins pay adjustment request stated only that the original demotion step and salary was incorrect, and that the Agency's staff had encouraged Watkins to pursue the salary increase. The Hearing Officer correctly ruled that the appeal was not proper under either provision of CSR 19-10 a). Moreover, the requested relief would have required the Hearing Officer to order a de facto modification to the classification plan, something which is outside of the Hearing Officer's jurisdiction. See CSR 7-16, 17, 18 as to Career Service Board's rule-making function to adopt the classification and pay plan.

The Hearing Officer finds the decision in In Re Susan Apodaca, 149-03, more on point. In that appeal, as here, the appellant's position was reallocated.

The director of Apodaca's agency submitted a Personnel Action to the Career Service Authority (CSA) to approve an increase in Apodaca's pay from pay grade 620T, step 10 to pay grade 805A, step 8. The CSA rejected that request and determined instead set appellant's pay at grade 805A, step 7. The hearing officer determined the percentage increase requested by the Agency would have been 4.28%, while the CSA determination resulted in a 1.97% increase. Id., at 1. The central issue in the appeal was the interpretation of CSR 9-64 to Appellant's reallocation, rather than the classification and pay plan set by rule-making under Rule 7, or the annual pay adjustments established by the Board under Rule 8.

The Hearing Officer finds, consistent with Apodaca, that CSR 19-10 a) 1) confers jurisdiction to review the application of CSR 9-64 to an appellant's pay following a reallocation of her position. That rule states

Section 19-10 Actions Subject to Appeal

An applicant or employee who holds career service status may appeal the following administrative actions relating to personnel.

a) Actions of the Personnel Director: Actions of the Personnel Director or a designated representative, which meet any of the following criteria:

1) The action results in an alleged violation of the Career Service provision of the Denver City Charter, or Ordinances relating to the Career Service, or the Personnel Rules.

Pursuant to CSR 19-10 a) 1), the Appellant has alleged a violation in the application of a CSR rule (CSR 9-64) by the Personnel Director. At the time of this appeal CSR 9-64 required reallocation "shall be set in the higher salary range at a step that reflects at least a 2.25% increase in pay . . ."1 Therefore, the Hearings Officer retains jurisdiction to consider whether the Personnel Director correctly applied CSR 9-64 in setting the Appellant's pay. The next step is to determine if, in the light most favorable to her, the Appellant has stated a claim upon which relief may be granted.

II. Relief

The Agency, within its Response to Order to Show Cause, moved to dismiss the Appellant's appeal. In that regard, the following principles apply: statements in the Appeal must be viewed in the light most favorable to the Appellant; all assertions of material facts must be accepted as true; and the Motion to Dismiss must be denied unless it appears beyond doubt that the

1 CSR 9-64 has since been amended 2/25/04 and 3/19/04.

Appellant cannot prove that the facts as she alleges them would entitle her to relief. Dorman v. Petrol Aspen, Inc., 914 P.2d 909, 911 (Colo. 1996).


Applying these principles to the current case, the parties agree the Appellant's supervisor requested the Appellant's pay be set at step 10 pursuant to CSR 9-64. They also agree the supervisor's request was denied by the CSA. They agree it was that denial which formed the basis for this appeal. Those are the material facts in this case. As the facts are not in dispute, and the facts establish a claim under the jurisdiction of the Hearings Officer, all that remains is to determine whether any relief may be granted

The Appellant received \$4422 per month in her former position as Administrative Operations Supervisor. Following her reallocation, even after the downward revision by the CSA, she now receives \$4521 in her current position as Operations Administrator. That change calculates to an increase of 2.25% when rounded to the nearest second decimal position. The Appellant has received all she is entitled under the provisions of CSR 9-64. There is no further relief available. Her argument that her supervisor, and not the CSA is the final authority to determine her pay step is without merit. See, e.g. CSR 9-53 ("a pay adjustment within the salary range requires the approval of the Personnel Director"), CSR 9-64 ("When an employee meets the requirements to progress to a higher class series and the Personnel Director or designee approves the progression..."), CSR 9-52 ("...the appointing authority may request that the Personnel Director authorize a waiver to pay such person at a step within the growth sector." From these sources, it must be concluded that the Personnel Director's decision was not in violation of CSR 9-64.

ORDER

The Hearing Officer finds he has jurisdiction to consider the issues raised in this appeal under CSR 19-10 a) 1), and further finds that Appellant has failed to state a claim upon which relief may be granted. This appeal is DISMISSED with prejudice.

DONE this 25th day of June, 2004.



Bruce A. Plotkin
Hearings Officer
Career Service Board

CERTIFICATE OF MAILING

I hereby certify that I have forwarded a true and correct copy of the foregoing **ORDER DISMISSING APPEAL** by depositing same in the U.S. mail, postage prepaid, this 28th day of June, 2004, addressed to:

Ms. Julie Martinez
9048 Gale Blvd. #3
Thornton, CO 80260

I further certify that I have forwarded a true and correct copy of the foregoing **ORDER DISMISSING APPEAL** by depositing same in the inter-office mail, this 28th day of June, 2004, addressed to

Mr. Luis Colón
Dept. of General Services

Christopher M.A. Lujan, Esq.
City Attorney's Office
Dept 1108

