

8/12/08

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

Appeal Nos. 64-07, 61-07, 62-07, 67-07

FINDINGS AND ORDER RE: AGENCY'S MOTION TO STAY; APPELLANTS' MOTION TO DISMISS APPEAL AND ENFORCE BOARD ORDER

IN THE MATTER OF THE CONSOLIDATED APPEALS OF:

AUDRA MESTAS, PATRICIA SALAZAR, LAURA FUENTES, KAREN SIERRA,

Appellants/Respondents,

vs.

DEPARTMENT OF PARKS AND RECREATIONS, and the City and County of Denver, a municipal corporation,

Agency/Petitioner.

This matter is before the Career Service Board on the Agency's Motion to Stay Appeal, Appellants' Response to that Motion, and Appellants' Motion to Dismiss Appeal and Enforce Board Order. The Board has reviewed the pleadings and **DENIES** the Agency's Motion to Stay Appeal; **GRANTS** Appellants' Motion to Dismiss Appeal, and **GRANTS, IN PART**, Appellants' Motion to Enforce Board Order (as it applies to reinstatement only) on the following grounds.

Agency's Motion to Stay

The Agency filed its Petition for Review on June 16, 2008. Pursuant to CSR 16-64 A. and B., the Agency was required to file a request for the transcript of the hearing, or in the alternative, file a notice that no transcript was being requested, within 20 days of the filing of its Petition. That deadline was July 7, 2008, and the Agency neither requested a transcript, nor filed a notice that no transcript was needed. Instead, on July 29, 2008, the Agency filed a motion to stay the appeal.

As grounds for its motion, the Agency states that the parties have engaged in settlement negotiations and the Agency did not want to unnecessarily spend funds on a transcript. While the Board commends the parties for their attempts to settle this matter, the Agency's motion is not timely and it does not offer any explanation for its delay. The fact that the parties may have discussed settlement certainly did not prevent the Agency from seeking a stay before the July 7th deadline. Moreover, the Agency, while apparently

engaged in settlement negotiations, did not consult with Appellants as to their position on the stay and Appellants oppose it. The Board does not find good cause for the Agency's untimely request and therefore its motion to stay the appeal is denied.

Appellants' Motion to Dismiss Appeal and Enforce Board Order

Having denied the Agency's request for a stay, Appellants' motion to dismiss the appeal requires an examination of where the Agency can go from here. Pursuant to CSR 16-65, the Agency's opening brief is due on August 11, 2008. However, the Board notes that four pages of the Agency's Petition for Review are devoted to the sufficiency of the evidence, and without a transcript and a designation of exhibits admitted in the hearing, the Agency cannot proceed on this ground. Similarly, the other grounds raised on appeal also turn on the factual issues decided in the hearing. The Board cannot determine whether the Hearing Officer erroneously interpreted CSR 16-60 A. (neglect of duty), 16-60 C. (carelessness in the performance of duty), 16-60 J. (refusal to comply with lawful order), 16-60 K. (failure to meet standards of performance), 16-60 Z. (conduct prejudicial), or determine any policy considerations this case may have, without examining the actions or inactions taken by the Appellants and the Agency which led the Hearing Officer to conclude that these rules were not violated. Thus, while four days remain for the Agency to file an opening brief, without a record of the hearing, there is no relief the Board can grant in this appeal.

The Board also notes that city agencies have routinely filed motions to dismiss the appeals of career service appellants who, without good cause, have failed to meet deadlines for requesting transcripts or filing briefs, and the Board has granted those motions. See, *In the Matter of the Appeal of Cathryn L. Diaz*, Appeal No. 13-06A. These deadlines apply equally to city agencies. Because the Agency failed to timely request a transcript and a designation of the record, which are necessary to a resolution of the issues on appeal, Appellants' motion to dismiss this appeal is granted.

Finally, the order Appellants seek to enforce is the Board's Order of June 19, 2008, denying the Agency's request to stay the Hearing Officer's order of reinstatement. Almost two months later, Appellants Mestas, Fuentes and Salazar have not been reinstated. The Board is mindful of the fact that following the termination of these Appellants, their positions were eliminated and their functions were transferred to the Controller's Office as part of a city-wide consolidation of payroll functions. But the elimination of Appellants' positions does not relieve the Agency of its obligation to reinstate them, as the Board's Order of June 19, 2008 should have made clear.

The Board is also mindful that the lack of payroll functions to which Appellants could be assigned within the Agency presents significant hardships and consequences for all parties in this appeal, not the least of which is a possible future lay off. Hopefully, Appellants will continue in their efforts to find other open positions within the City and the Board encourages the parties to continue in their settlement negotiations. In the meantime, however, these Appellants are to be reinstated by the Agency to their former classifications and pay grades.

As to back pay and benefits, that issue is separate from reinstatement and not properly before the Board in this appeal. The Board's Order of June 19, 2008 addressed only the issue of staying the Hearing Officer's order of reinstatement. The Board does not have jurisdiction to order the Agency to provide Appellants with an accounting, or to order the Agency to pay back pay and benefits. If the parties are unable to resolve matters involving back pay and benefits, the proper remedy is to set the matter for a hearing before the Hearing Officer.

ORDER

IT IS THEREFORE ORDERED that the Agency's Motion to Stay Appeal is **DENIED**; the Appellants' Motion to Dismiss the Agency's Appeal is **GRANTED**; and the Appellants' Motion to Enforce Board Order is **GRANTED, IN PART**, as it applies to reinstatement only. The Agency is ordered to reinstate Appellants Mestas, Salazar and Fuentes to their former classifications and pay grades. This matter is **REMANDED** back to the Hearing Officer for further proceedings consistent with the Board's **FINDINGS AND ORDER**.

SO ORDERED by the Board on August 7, 2008 and documented this
12th day of August, 2008.

BY THE BOARD:



Tom Bonner, Co-Chair

Board Members Concurring:

Nita Henry
Luis Toro
Kit Williams

Board Member Felicity O'Herron did not participate in the Board's decision.