

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

CAREER SERVICE  
HEARING OFFICE

MAR 10 2009

Appeal No. 48-08

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**FINDINGS AND ORDER RE: INTERLOCUTORY APPEAL (2)**

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IN THE MATTER OF THE APPEAL OF:

**TIM MULLER,**

Appellant/Petitioner,

vs.

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

Agency/Respondent.

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This matter is before the Career Service Board on Appellant's motion for interlocutory appeal. The Board has reviewed and considered the full record before it and **AFFIRMS** the Hearing Officer's Decision, dated December 1, 2008.

**FINDINGS**

This is the second interlocutory appeal in this case. Appellant filed a career service appeal on July 2, 2008, alleging that his placement on investigatory leave with pay constituted retaliation in violation of the Whistleblower Protection Ordinance. In response to the Agency's motion to dismiss, the Hearing Officer ruled that the definition of "adverse employment action" in the ordinance could include placing an employee on investigatory leave with pay, and therefore, Appellant's appeal under the Whistleblower Ordinance could proceed. The Agency filed a motion for interlocutory appeal, and on October 24, 2008, the Board affirmed the Hearing Officer's decision.

Appellant was returned to work on August 1, 2008, and the letter placing him on investigatory leave was removed from his Agency personnel file. The Board notes that these were the remedies Appellant originally sought in his appeal. **(Record, 1-12)**. Nevertheless, Appellant now seeks attorney's fees as an additional remedy. The Hearing Officer determined that he did not have jurisdiction to grant an award of attorney's fees in a career service appeal and the Board agrees.

First, the Whistleblower Protection Ordinance does not provide for attorney's fees

as a remedy. More importantly, however, are the limitations on the Hearing Officer's jurisdiction under the career service rules. Section 9.1.1 of the Denver City Charter gives the Career Service Board the authority to adopt, administer and enforce rules that are necessary to a merit-based personnel system, including rules governing "appeals from actions of appointing authorities to the Board and any hearing officers appointed by the Board." Pursuant to its rulemaking authority, the Board has adopted CSR 19-55, which limits the jurisdiction of career service hearing officers to affirming, reversing, or modifying the actions which give rise to an appeal. Accordingly, the Hearing Officer correctly determined that he did not have authority to grant an award of attorney's fees.

**ORDER**

**IT IS THEREFORE ORDERED** that the Hearing Officer's Decision of December 1, 2008, is **AFFIRMED**.

SO ORDERED by the Board on March 5, 2009, and documented this  
10<sup>th</sup> day of March, 2009.

BY THE BOARD:

  
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Tom Bonner, Co-Chair

Board members concurring:

Felicity O'Herron  
Patti Klinge