

**HEARING OFFICER, CAREER SERVICE BOARD
CITY AND COUNTY OF DENVER, COLORADO**
Appeal Nos. 08-09, 09-09

ORDER DENYING MOTION TO DISMISS

IN THE MATTER OF THE APPEAL OF:

PATRICIA VASQUEZ and COLIN LEWIS, Appellants,

vs.

DEPARTMENT OF GENERAL SERVICES, THEATRES AND ARENAS
and the City and County of Denver, a municipal corporation, Agency.

The Agency has moved to dismiss the above consolidated appeals. The pro se Appellants have timely responded to the motion.

This is an appeal of a grievance challenging the Agency's interpretation of the term "merit date" as defined at CSR § 13-10 F., and its negative effect on their resulting step pay increase. The appeal also checked "Grievance of Performance Enhancement Program Report", an appeal under § 19-10 A.2.c. Appellant later clarified that this appeal is not based on that rule, as their ratings were both exceptional.

Appellants bear the burden of demonstrating subject matter jurisdiction in response to a motion to dismiss. The substance of the claim, as evidenced by the facts alleged and the relief requested, determines the existence of subject matter jurisdiction. City of Boulder v Public Service Company of Colorado, 996 P2d 198 (Colo. App 1999).

The Agency asserts that the Hearing Office lacks jurisdiction over this appeal of a grievance because the Agency correctly interpreted the rule at issue. The Agency supports its argument by citing previous versions of § 13-10 and Rule 9. The sole issue on the jurisdictional question is whether Appellants have raised a colorable claim under Rule 19: here, that the grievance being appealed violated § 13-10 F and negatively affected Appellants' pay.


There can be no question that these appeals challenge the Agency's interpretation of § 13-10 F, and that Appellants' merit increases were affected by that interpretation. Therefore, Appellants have successfully made a showing of jurisdiction sufficient to proceed to hearing on the factual and legal issues, including interpretation of the rules at issue.

Order

Based on the foregoing, the following orders are entered herein:

1. The Agency's motion to dismiss is DENIED.
2. To the extent that the appeal appears to invoke jurisdiction of a PEPR appeal under § 19-10 A.2.c, that appeal is dismissed.

Done this 11th day of March, 2009.



Bruce A. Plotkin
Career Service Hearing Officer