

**DISCOVERY ORDER**

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IN THE MATTER OF THE APPEAL OF:

**KENNETH RAMIREZ**, Appellant,

vs.

**DEPARTMENT OF AVIATION**,

and the City and County of Denver, a municipal corporation, Agency.

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On September 6, 2011, the Appellant filed a Motion for Discovery. The Agency responded on September 12, objecting to three out of four of Appellant's discovery requests.

This is a direct appeal of the Agency's dismissal of Appellant from his position as a Painter in the Maintenance Division, at Denver International Airport, for his alleged violations of Career Service Rules §§ 16-60 A., B., J., K., L., V., and Y., by his pattern of unsatisfactory job performance, and his conduct which caused an accident between two DIA vehicles.

The Appellant requests the following discovery:

1. Physical Inspection of grinder

Appellant requests that the Agency allow him to physically inspect the grinder that Appellant was operating at the time of the accident. In support of his request, Appellant asserts that the Agency made alterations to the grinder after it was purchased, and further asserts that the emergency brake and the clutch were not functioning properly on the day of the accident.

The Agency objects, because: 1) Appellant had the opportunity to inspect the grinder the day of the incident and, either, failed to do so, or failed to report any defects he observed; 2) Appellant has not established that he has the expertise to recognize a defect in the equipment; and 3) any defect that may be noted in an inspection conducted presently is irrelevant to whether any alleged defect existed at the time of the accident, in May 2011.

I find that Appellant's request to inspect the grinder is relevant or is reasonably calculated to lead to admissible evidence, and is not unduly burdensome to the Agency. Agency's objections relate to the weight which should be accorded to

Appellant's evidence rather than on its admissibility. Appellant is entitled to establish that, based upon his experience with operating grinders for the Agency, this grinder was not operating properly at the time of the accident. It is within the Hearing Officer's purview to determine Appellant's credibility and knowledge of the grinder.

## 2. Agency Policies and Procedures

Appellant also requests all written Agency policies and procedures relating to the operation of the grinder, including specific procedures for performing grinding and sweeping along the runway. The Agency states that it has produced all relevant policies and procedures, and to the extent that the discovery already provided does not respond to the request, no such documents are believed to exist.

Appellant's request is relevant and narrowly tailored to defend against the Appellant's alleged Rule violations including neglect of duty, careless performance of a duty, failure to meet established standards of performance, failure to observe written agency regulations, policies, and failure to follow safety regulations. To the extent it has not already done so, the Agency must provide all policies and procedures which reasonably and directly relate to the operation of the grinder.

## 3. Repair and Maintenance Records

Appellant requests all repair and maintenance records during 2010 and 2011 for the grinder that Appellant operated on May 25, 2011, when the accident occurred. The Agency objects on the basis that maintenance and repair records are inadmissible because the absence of records do not establish a defect, and the presence of repair records only prove that work was performed, and not that the grinder was dysfunctional the day of the accident.

Appellant's request is relevant and narrowly tailored to Appellant's defense that the grinder he drove the day of the incident was not functioning properly, contributing to the accident. His request is limited in time and scope. Agency's argument relates to the weight that should be attributed Appellant's evidence rather than its admissibility.

## 4. Appellant's Prior Accident Reports

Finally, Appellant requests all accident reports involving or relating to the Appellant during his employment. In support of his request, Appellant appears to assert that the other two accidents in which he was involved were not his fault, and have no bearing on whether he routinely operates machinery safely. He also states that the injuries he sustained in those prior accidents prove that the Agency has put him "in harms' way" previously. The Agency objects on the basis that accident reports for incidents in which Appellant was injured, not through his own fault, are not relevant to whether he is a "safe" employee, nor are they relevant to whether he was placed "in harms' way" on prior occasions.


If the Agency asserts Appellant operated equipment unsafely as a course of conduct, Appellant's request is relevant and is granted. If the Agency does not intend

to assert a course of conduct, the request is irrelevant and is denied.

ORDER

Based on the foregoing, Appellant's requests for production #1-3 are GRANTED, and #4 is granted to the extent the Agency intends to assert a course of conduct claim against the Appellant, either as part of its rules violation claims or as to the degree of discipline.

DONE September 13, 2011.



Bruce A. Plotkin  
Career Service Hearing Officer

I certify that on September 13, 2011, I delivered a copy of this Notice of Hearing and Pre-hearing Order to the following:

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