

HEARING OFFICER, CAREER SERVICE BOARD, CITY AND COUNTY OF DENVER,
COLORADO

Appeal No. 46-03

ORDER OF DISMISSAL

IN THE MATTER OF THE APPEAL OF:

LYNN T. RUBNER, Appellant,

Agency: DEPARTMENT OF GENERAL SERVICES, THEATRES and ARENAS,
and THE CITY AND COUNTY OF DENVER, a municipal corporation.

This matter is before the hearing officer on Appellant's Response to the Hearing Officer's Order to Show Cause filed on May 9, 2003. Appellant timely filed her Response on May 19, 2003. For the reasons explained herein, this matter is being DISMISSED for lack of jurisdiction.

The points raised in the Show-Cause Order and Appellant's responses to these concerns as follows:

1. Whether Appellant has timely filed her grievance, in light of Appellant's complaints of actions occurring during 2002:

Appellant responds that she discovered she was on probation on April 7, 2003. Appellant filed her first-level grievance two days later, on April 9, 2003. In light of Appellant's stated actual notice being within ten days before the filing of the grievance, the hearing officer concludes this filing is timely.

2. Whether Appellant has properly exhausted the grievance procedures set forth in CSR 18-12, her first- and second-level grievances apparently having been filed on the same day.

Appellant responds that her first-level grievance was denied the day she filed it, and that she forwarded her second-level grievance that same day. This is why the filing dates are the same. The hearing officer concludes from this statement of facts that Appellant has exhausted the grievance process set forth under CSR 18-12.

3. Whether Appellant, among whose complaints is that she is on probationary status, has standing to file an appeal under CSR 5-61 2), which limits appeals by probationary employees to those alleging discrimination:

Appellant states that she was originally hired on April 17, 2001, and that in October of 2001 she was released from probationary status. Appellant states it was her belief that she was career status until two days before the day she filed this grievance, at which time payroll informed her that she had been on probation since October 2002.

However, according to the chronology attached to her Response, Appellant was appointed into a new position in September of 2002. It is apparent that the payroll department was referring to the fact that Appellant is on *promotional* probationary status. CSR Rule 5 sets forth the rules governing this type of probationary status. Specifically, CSR 5-63, Employees in Promotional Probationary Status, states as follows:

An employee in promotional probationary status, whether attained through promotional or re-promotional appointment, has the rights, privileges, and benefits of an employee in career status, except that if the employee does not perform at or above "Effective" on a Performance Enhancement Program Report during the promotional probationary period, the employee shall be returned to a position in the class from which promoted within the agency from which promoted. A return from promotional probation may not be appealed except for alleged discrimination.

At the heart of Appellant's grievance is that she feels her Performance Enhancement Program ("PEP") Plan and new performance rating should be amended to reflect her new duties. She asserts that she is entitled to a salary increase based on excellent performance of the duties such a PEPR would reflect, but that the Career Service has informed her that she will receive no salary increases while she is on probation. Appellant alleges that the CSR rules in this regard are "inflexible and unjust."

Appellant's complaint relates to her pay, presumably as somehow determined by the parameters of her PEPR. The Hearings Office lacks jurisdiction to consider these matters. CSR Rule 7, governing classification and pay, was amended in March of 2001 to eliminate Hearings Office jurisdiction over matters relating to classification and pay. CSR 19-10, governing appeals, was also amended in 2001 to remove Hearings Office jurisdiction over these issues.

Pay Administration is strictly governed by CSR Rule 9. There is no specific jurisdictional grant of authority over pay issues Rule 9 itself, nor is there any such provision in CSR 19 governing appeals. Finally, CSR 13-15 prohibits a grievance of the PEPR process, and CSR 19-10 e) limits Hearings Office jurisdiction over PEPR's to a review only in the instance of a below-expectations PEPR. Appellant does not allege as much here.

Therefore, Appellant has alleged no action that the hearing officer has the authority to affirm, modify or reverse under CSR secs.19-10 and 19-27. Appellant's probationary status itself appears to be in compliance with the CSR rule, and Appellant has failed to articulate any facts suggesting otherwise. Appellant has thus failed to articulate any violation of the Career Services Rules over which the Hearings Office has jurisdiction, and she has failed to request any remedy the Hearings Office has the authority to grant.

ORDER

WHEREFORE, this matter is DISMISSED for lack of subject-matter jurisdiction.

Dated this 27th day of May, 2003.



Joanna Lee Kaye
Hearing Officer for the
Career Service Board

CERTIFICATE OF MAILING

I hereby certify that I have forwarded a true and correct copy of the foregoing **ORDER OF DISMISSAL** by depositing same in the U.S. mail, postage prepaid, this 27 day of May, 2003, addressed to:

Lynn T. Rubner
2540 Stuart St.
Denver, CO 80212

I further certify that I have forwarded a true and correct copy of the foregoing **ORDER OF DISMISSAL** by depositing same in the interoffice mail, this 27 day of May, 2003, addressed to:

Robert D. Nespor
Assistant City Attorney
Employment Law Section

Tom Migaki
Department of General Services

Flabby Hilliard
Theatres and Arenas Division

V. Gonzado