

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

Appeal No. 66-08 A

FINDINGS AND ORDER

IN THE MATTER OF THE APPEAL OF:

ELIZABETH SALAZAR,

Appellant/Petitioner,

vs.

DENVER COUNTY COURT, and the City and County of Denver,

Agency/Respondent.

This matter is before the Career Service Board on Appellant's Petition for Review. After reviewing and considering the full record before it, the Board **AFFIRMS** the Hearing Officer's Decision of December 26, 2008, on the grounds outlined below.

FACTUAL BACKGROUND

On September 25, 2007, Appellant received a "needs improvement" rating on her annual performance rating and was placed on a performance improvement plan to address chronic absenteeism and other performance issues. Nevertheless, she continued to exhibit a pattern of excessive absenteeism. In February 2008, Appellant received a written reprimand; in March 2008, she was suspended for two days after 13 incidents of leave abuse over a three-month period; and in April 2008, she was suspended for 30 days. Following additional absences in July, Appellant was terminated, effective August 18, 2008, for violation of CSR 16-60 S. (unauthorized absence from work/abuse of sick leave).

FINDINGS

The Board has the authority to review decisions of the hearing officers only on the five grounds specified in CSR 19-61; yet no grounds for appeal are identified in either Appellant's Petition for Review or her Opening Brief. When, as here, an appellant is represented by an attorney, the Board expects the attorney to not only be familiar with the grounds for appeal, but to specifically state those grounds in his petition for review, as required by CSR 19-62 D. It is not the Board's responsibility to guess at potential grounds for appeal.

Appellant's argument is that she should have been disqualified under CSR 14-21 instead of disciplined under CSR 16-60 S. In its answer brief, the Agency assumes that Appellant must be claiming an erroneous rules interpretation under CSR 19-61 B. However, the issues before the Hearing Officer were whether the Agency proved that Appellant violated CSR 16-60 S., and whether termination of employment was appropriate. The Hearing Officer found in favor of the Agency on both issues. The fact that Appellant believes the Agency should have considered a disqualification under a different career service rule does not transmogrify the Hearing Officer's decision into an erroneous interpretation of CSR 16-60 S.

Additionally, the Board notes that Appellant raised this argument before the Hearing Officer:

Finally, Appellant argues that she should have been offered a disqualification under CSR § 14-21. That rule permits an agency to initiate a disqualification "if a . . . physical impairment . . . prevents satisfactory performance of the essential functions of the position." Here, Appellant submitted her doctor's diagnosis of fibromyalgia and asthma, but no medical opinion that Appellant was prevented by either condition from performing the essential functions of her job. Appellant did not request disqualification, or inform the Agency at any time that she believed she was unable to fulfill the duties of her position. Absent such evidence, the Agency had no notice that disqualification may be appropriate.

Decision, p. 7. Thus, it appears that Appellant's argument on appeal is an attempt to challenge the sufficiency of the evidence under CSR 19-61. Unfortunately, Appellant did not order a transcript of the proceedings and therefore fails to demonstrate that the Hearing Officer's findings are clearly erroneous and unsupported by the record.

ORDER

IT IS THEREFORE ORDERED that the Hearing Officer's Decision, dated December 26, 2008, is **AFFIRMED**.

SO ORDERED by the Board on April 16, 2009, and documented this 29th day of April, 2009.

BY THE BOARD:


Luis Toro, Co-Chair