

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

Appeal No. 67-05

ORDER DISMISSING APPEAL

IN THE MATTER OF THE APPEAL OF:

PATRICK A. SHIELDS, Appellant,

Agency: Department of Parks and Recreation, and the City and County of Denver,
a municipal corporation.

The Hearings Officer issued an Order to Show Cause on June 20, 2005, requiring the Appellant to answer why this appeal should not be dismissed for lack of jurisdiction. The Appellant filed a timely response on June 30, while the Agency responded on July 11, 2005. Having considered both responses, and being otherwise informed in this matter, the Hearings Officer finds and orders as follows.

There are two jurisdictional issues that arise with this appeal: whether the Appellant provided sufficient grounds under Career Service Rule (CSR) 5-63, for the Hearings Officer to take jurisdiction, and whether the Appellant timely filed his appeal.

1. Career Service Rule 5-63 provides

An employee in promotional probationary status, whether attained through promotional or repromotional appointment, has the rights, privileges and benefits of any 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.** [emphasis added].

The Appellant was terminated from promotional probation status on May 17, 2005, pursuant to CSR 5-50 and 5-63. [Appeal attachment]. Since the only basis for appeal of the Agency's decision is for alleged discrimination, the Appellant was required to respond in some fashion what discrimination was shown by the Agency. A review of the Appellant's response does not reveal any such response. The Appellant cited CSR 5-62, however his reliance is misplaced since the rule addresses only employees in Career Service, while the Appellant's status, with respect to this appeal, was that of promotional probation. The Hearings Officer

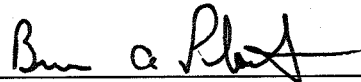
therefore finds he is without jurisdiction to consider the merits of the Appellant's appeal, as he failed to alleged no discrimination, the only basis from which he may appeal his termination from promotional probation. Unfortunately, the Hearings Officer may not consider the merits of the Appellant's claims without jurisdiction.

2. Career Service Rule 19-22 a) 1) provides an appeal must be filed with the Career Service Board Hearings Officer 10 calendar days from the date of notice of action being appealed. The termination of the Appellant's promotional probationary status occurred with the Agency's May 17, 2005 notice. The Agency's Certificate of Service indicated that notice was mailed on May 18, giving the Appellant until May 31, 2005 to file his appeal. Appellant did not file an appeal, but rather went through the grievance process, and filed his appeal on June 15, 2005.

The Appellant responded that the absence of clear instructions and definition how to proceed was the cause of his failure to comply with Career Service Rules. Unfortunately, jurisdiction cannot be conferred on upon the Hearings Officer by an employee's misunderstanding of those requirements. Therefore, the Hearings Officer may not consider the Appellant's substantive arguments for lack of jurisdiction.

For reasons stated above, the Hearings Officer finds he is without jurisdiction to consider the Appellant's appeal, and therefore ORDERS this appeal is DISMISSED WITH PREJUDICE.

Dated this 12th day of July, 2005



Bruce A. Plotkin
Hearing Officer
Career Service Board

CERTIFICATE OF MAILING

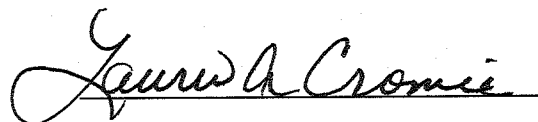
I hereby certify that I have forwarded a true and correct copy of the foregoing **ORDER DISMISSING APPEAL** by depositing same in the U.S. mail, postage prepaid, this 24 day of July, 2005, addressed to:

Mr. Edward Bagwell
Teamsters
3245 Eliot St.
Denver, CO 80211

Mr. Patrick A. Shields
5079 Utopia Court
Denver, CO 80239

I further certify that I have forwarded a true and correct copy of the foregoing **ORDER DISMISSING APPEAL** by depositing same in the interoffice mail, this 24 day of July, 2004, addressed to:

Robert A. Wolf, Esq.
City Attorney's Office
Employment Law Section


Laura A. Cronin