

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

Appeal No. 334-01

FINDINGS AND ORDER

IN THE MATTER OF THE APPEAL OF:

FRANCES TRUJILLO, Appellant,

v.

Agency: Career Service Authority and the City and County of Denver, a municipal corporation.

INTRODUCTION

For purposes of these Findings and Order, Frances Trujillo shall be referred to as "Appellant." The Career Service Authority shall be referred to as the "CSA" or "Agency." The City and County of Denver shall be referred to as the "City." The Rules of the Career Service Authority shall be abbreviated as "CSR" with a corresponding numerical citation.

A hearing on this appeal was held December 6 and 7, 2001, before Robin R. Rossenfeld, Hearing Officer for the Career Service Board. Appellant was present and was represented by Anne E. Whitney, Esq. The CSA and City were represented by Robert M. Liechty, Esq., Cross & Liechty, P.C., Special Assistant City Attorney, with Peter Garritt serving as the advisory witness on behalf of the CSA and City.

The Hearing Officer has considered the following evidence in this decision:

The following witnesses were called by and testified on behalf of the Appellant:

Appellant, Xavier DuRán, Sandra S. Klawonn

The following witnesses were called by and testified on behalf of the CSA:

Sandra S. Klawonn, Peter Garritt

The following exhibits were offered and admitted into evidence on behalf of the Appellant:

Exhibits A - R

The following exhibits were offered and admitted into evidence on behalf of the Agency:

Exhibits 1 - 13

The following exhibits were admitted into evidence by stipulation:

Exhibits A - R, 1 - 13

The following exhibits were offered but not admitted into evidence and therefore not considered in this decision:

None

NATURE OF APPEAL

Appellant appeals the determination that she did not meet the minimum experience requirements for the position of Administrative Assistant when she applied to sit for the promotional Administrative Assistant examination given on August 24, 2001. She is asking that she be permitted to sit for the Administrative Assistant examination and, if she receives a passing score, be placed on the current Administrative Assistant list.

ISSUES ON APPEAL

1. Was Appellant's request for administrative review timely?
2. Does the doctrine of equitable estoppel apply to this matter?
3. Was the determination that Appellant does not meet the minimum qualifications for Administrative Assistant arbitrary, capricious or an abuse of discretion?
4. What is the appropriate remedy for Appellant?

PRELIMINARY MATTERS

The Agency filed a Motion to Dismiss the Appeal on November 1, 2001, on the basis that Appellant had not complied with the time limitations under CSR §3-42. Appellant responded to the Motion to Dismiss on November 16. Appellant denied the appeal was untimely. She asked that the Hearing Officer either deny the Motion to Dismiss outright or permit Appellant the opportunity to offer evidence on issues of fact raised by the Motion to Dismiss and the Response during the December 6 hearing. On November 19, the Hearing Officer denied the Motion to Dismiss because of the contested factual allegations.

The Motion to Dismiss was again raised at the commencement of the hearing on December 6. The Hearing Officer reserved ruling on the Motion. The issues addressed in that Motion will be addressed in this Findings and Order.

FINDINGS OF FACT

1. Appellant is employed in the Employment Law Practice Group ("ELPG") of the City Attorney's Office. Her current CSA classification is Legal Secretary. At the time of the hearing, she had been in that position for two years, nine months. She is

primarily responsible for the work of Rick Stubbs, Assistant City Attorney, Senior, and Sybil Kiskan, Assistant City Attorney, Specialist. Xavier DuRán is the Managing Attorney for the ELPG.

2. Appellant has worked for the City and County of Denver since June 1992. Her job immediately previous to her current position was as a Senior Support Services clerk at the Career Services Authority. She held that position from January 1997 through February 1999.

3. Appellant has worked "second" jobs while working for the City and County of Denver. These have included working as a cashier at Niketown and as a customer service representative for Moneygrams.

4. Appellant first applied for promotion to Administrative Assistant in September 1999. The September 13, 1999, announcement for the position read:

PROMOTIONAL – ADMINISTRATIVE ASSISTANT
2,180 - \$2,478 MO PAY GRADE 803-20X
50% WRITTEN, 50% ASSESSMENT INTERVEIW, PERFORMANCE TO
QUAILFY

HS/GED, plus three years of clerical experience which includes one year of experience of the type and level of Senior Secretary. A combination of appropriate education and experience may be substituted for the minimum experience requirement except for the one year of experience of the type and at the level of Senior Secretary. This eligible list will expire as of 11/20/99. Present City employees should apply now, even if they are not interested in the current openings. Promotional eligible lists usually last one year and will be used to fill other openings as they occur. Closing September 24, 1999.

(Exhibit H)

5. Appellant was allowed to test for the exam in 1999. She successfully passed the test and was put on the promotional eligible list. She interviewed for a position at DIA, which she did not get.

6. Appellant next applied for promotion to Administrative Assistant in December 2000. The position again stated that it was open to current city employees, that a high school diploma or GED was required, as well as:

three years of clerical experience which includes one year experience of the type and at the level of Senior Secretary. A combination of appropriate education and experience may be substituted for the minimum experience requirement except for the one year experience of the type and at the level of Senior Secretary.

(Exhibit K)

7. Appellant was sent notification that she was over-qualified for this position and that it was actually a demotion/transfer. Therefore, she was unable to sit for the examination. She did not appeal this decision.

8. Appellant applied for the Administrative Assistant position again in August 2001. The posted requirements for the position remained the same as for the previous two postings. (See Exhibit A)

9. Appellant wrote in her application that her supervisors were Sybil Kisken and Rick Stubbs. She stated that her job title was Legal Secretary. She described her duties as “

Perform legal secretary duties to attorneys, paralegals, & support staff; man & update case files; confirm & relay case info to attorneys and/or witnesses; prepare legal documents; maintain attorneys calendars & schedule requests; update legal resources; file legal documents w/various courts

(Exhibit B, p. 1)

Appellant had provided similar information on each of her prior two applications for the Administrative Assistant position. (See Exhibits I and L).

10. The position closed on August 10, 2001.

11. On August 16, 2001, Appellant was sent a form letter informing her that she was ineligible for the position since she did not meet the minimum qualifications. Peter T. Garritt, Analyst, signed the computer-generated letter. (Exhibit C) Appellant testified that she received this letter on August 18 or 19.

12. While the form letter gives information about the 24-hour job hotline and encourages the applicant to apply for other jobs, the letter does not inform the applicant of the process or time limits for requesting administrative review of the determination of ineligibility.

13. Appellant sent an e-mail to Mr. Garritt at 10:20 a.m. on August 21, in which she questioned the Ineligible Notification. A copy was also sent to Mr. DuRán. She informed Mr. Garritt that she tested for the position in 1999, that she was notified that the position was a demotion/transfer in 2000, and that in August 2001 the payroll clerk for the Department of Law had informed her that it was a promotion. Appellant questioned the inconsistencies in the “system.” She asked Mr. Garritt to contact her at his earliest convenience “to straighten this situation out and provide me with a test date.” (Exhibit D)

14. Appellant went home sick around noon on August 21. She checked her voice-mail that afternoon. There was a response from Mr. Garritt on the voice-mail. Appellant returned the telephone call and spoke with Mr. Garritt. She told him that she was puzzled because she had been found to be qualified two years earlier and then over-qualified a year before, and was now being told she did not meet the minimum qualifications. While he was unable to articulate what he was looking for, Mr. Garritt indicated that he was looking for more experience or different experience than a legal secretary. Appellant pointed out that City Attorney J. Wallace Wortham, Jr.'s Administrative Assistant had been classified as a Legal Secretary before her promotion. Mr. Garritt indicated that he would not have promoted her.

15. During this telephone conversation, Mr. Garritt indicated that he was willing to reconsider her application if Appellant could convince him over the phone that she was qualified. Mr. Garritt then indicated to Appellant, "Go." Appellant testified that she was a bit flustered by this, but that she tried to give Mr. Garritt more information. He indicated that the information was not what he was looking for. Appellant told him she was going to grieve his decision. Mr. Garritt replied, "Whatever."

16. Appellant spoke to Mr. DuRán on August 22 because she was upset about the inconsistencies in the qualification decisions.

17. Mr. DuRán was concerned about Appellant's disqualification. He called Mr. Garritt to seek clarification as to why Appellant was qualified in 1999, over-qualified in 2000, and under-qualified in 2001 when she had two more years experience in 2001 than she had in 1999. Mr. Garritt indicated to Mr. DuRán that he was looking for "something more," but that he was not clear about the criteria he was looking for. Mr. Garritt told Mr. DuRán that Appellant should supplement her application.

18. Appellant sent in her supplemental information to Mr. Garritt, with a copy to Mr. DuRán, on August 23. (Exhibit E)

19. After he received the supplemental information, Mr. Garritt called Appellant and told he was not changing his mind. Mr. Garritt never notified Appellant of this decision in writing.

20. On August 31, 2001, Appellant sent a letter to Jim Yearby, Personnel Director, asking for reconsideration of Mr. Garritt's decision. (Exhibit F)

21. Career Service Rule 3 covers recruitment and examinations. It was revised in its entirety effective September 7, 2000. Pursuant to CSR §3-42, the time to request administrative review of a disqualification decision was shortened to five days from the date of mailing.

22. On September 10, 2001, Sandra S. Klawonn, Team Manger and the Personnel Director's designee in this case, responded to Appellant's request for administrative review. Ms. Klawonn informed Appellant that the request for administrative review was untimely since it was sent more than five days after the Notice had been sent (i.e., August 16, 2001). (Exhibit G)

23. Ms. Klawonn testified that she did not know that Mr. Garritt had "permitted" Appellant to submit additional information on August 23. She stated that her letter was based simply upon the dates of the Notice and the request for administrative review. Because the request for administrative review had not been made by August 21, Ms. Klawonn automatically considered it to be untimely.

24. Mr. Garritt testified that, while the CSR does not permit people to submit supplemental information, he allows applicants to do so because, if he changes his mind, the applicant can avoid the administrative review/hearing process. He also stated that he does not consider this to be re-opening the application.

25. Mr. Garritt spoke with Ms. Klawonn about the qualifications for the

position. Both Mr. Garritt and Ms. Klawonn testified that at least two agency heads had complained that candidates for Administrative Assistant positions were under-qualified in that they could not perform some of the job duties upon immediately assuming Administrative Assistant positions. Because of these complaints, Mr. Garritt decided to redo the Qualification and Experience Class Guide. The date of the new Class Guide is August 14, 2001. (Exhibit 8)

26. Under the experience guide information for Level B experience, Mr. Garritt wrote:

City experience at or above the level of Senior Secretary (611-C) will only count if it is similar in type to Senior Secretary, ie (sic) performing secretarial duties for assistant director. I did count Legal Secretary (614-C) experience if the applicant provided secretarial support directly to a section Supervisor but not if they only supported attorneys.

(Exhibit 8, p. 2)

27. Mr. Garritt could not remember whether the old Class Guide for Administrative Assistant mentioned how to handle Legal Secretaries at all. He testified that, if it did, it did not address the issue of the nature of work experience for a Legal Secretary that would have been the equivalent for a Senior Secretary.

28. Mr. Garritt testified that when he began his review of the applicants for the Administrative Assistant position using his newly prepared Class Guide, he discovered that the prior analyst had made a mistake in qualifying people, including Appellant, who were not qualified for the position.

29. Mr. Garritt testified that Appellant was incorrectly disqualified as over-qualified in 2000. He said that a clerical worker had assumed that, since the Senior Secretary class has a lower starting salary than Legal Secretary, the Administrative Assistant position would be a demotion. Ms. Garritt testified that the salary differential was minimal. Ms. Klawonn agreed with this statement. Both Mr. Garritt and Ms. Klawonn said that the differential was due to the market value of legal secretaries over other secretaries in the metro-Denver area.

30. Appellant testified that she performed all the job responsibilities at the same knowledge, skill and ability requirements as a Senior Secretary (Exhibit M) as part of her job. The difference was that Senior Secretaries perform the functions for "managers" while she performed them for attorneys.

31. Mr. DuRán testified that all the legal secretaries in the ELPG were cross-trained and could handle any work that came in. He testified that his own secretary, Sue Royball, had no additional or enhanced skills above those used by Appellant or any of the other legal secretaries in the ELPG. Ms. Royball did not have supervisory duties over the other legal secretaries in the ELPG; that responsibility rested with the attorneys the individual secretary was assigned to. He testified that, for him, the most important quality for all the legal secretaries in the ELPG was the ability to learn the particular skills, if not already known, and the characteristics he stated one was born with: diligence and loyalty. He felt that all the legal secretaries in the ELPG, not just Ms. Royball, had those qualities.

32. Mr. DuRán testified that he hired Ms. Royball within the last six months. She was hired from outside the City system. Mr. DuRán stated that the decision to hire a secretary for himself from outside the City did not mean that any of legal secretaries in the ELPG, including Appellant, could not do the job. He stated he did this because the attorneys wanted to keep their own secretaries and he did not want to disrupt the smooth functioning of the ELPG.

33. Mr. DuRán testified that the legal secretaries rotated duties throughout the day and that he would call each of them during the day during their appointed time to pick up messages. He stated that, while Ms. Royball was primarily responsible for handling his work, when she was fully loaded with work, he would go to any of the other secretaries and that they could handle whatever he asked them to do. He approximated that Appellant spent 5-10% of her time doing work for him, rather than for Ms. Kisken and Mr. Stubbs. He stated that the primary difference in the work between his secretary and the other secretaries in the ELPG was due to the fact that he was not carrying a caseload, while the other attorneys were, and his responsibilities were more politically sensitive than that of the line attorneys. He stated that Ms. Royball scheduled meetings with the Mayor's Office and the other secretaries scheduled meetings with agency heads.

34. Appellant also described the rotational nature of her duties. She testified that she spent approximately 10% of her time performing work for Mr. DuRán.

35. Mr. DuRán testified that in August 2001, Ms. Kisken was promoted to Assistant City Attorney Specialist, retroactive from August 1, 2000. The Assistant City Attorney Specialist is considered a team leader position.

36. Mr. DuRán testified that the other managing Assistant City Attorneys were Cathy Gale, Land Use and Development Group, John Gross, Contracts Group, and Stan Sharoff, Civil Litigation and Asset Recovery Group. All of their secretaries are classified as Legal Secretaries.

37. Mr. Garritt denied looking for "key words" when doing his analysis, but he admitted that he was looking for indications that the applicant worked for a supervisor.

38. Mr. Garritt assumed that all of the legal secretaries at the City Attorney's Office worked for line attorneys, not supervisors, even if they indicated the name of the managing attorney as the supervisor on their applications for Administrative Assistant, if they did not state that they performed the duties for the supervising attorney. As a result, he rejected the applications of five other legal secretaries who work for the Law Department in addition to Appellant (i.e., Suzanne Alexander, Stephanie L. Inderwiesen, Marilyn Montoya, Linda Taggart, Anita Galacia). He accepted the application of Esther Vargas, who indicated on her application that she performed administrative duties for her supervising attorney, Cathy Gale, even though Mr. Garritt did not know if Ms. Vargas had performed those duties for one month or one year. (See Exhibit 13)

39. Sharon Jantz, another legal secretary from the ELPG, was initially found to be under-qualified for the Administrative Assistant position based upon her initial application. (Exhibit Q) She was allowed to submit additional information. (Exhibit R) Based upon the additional information, Mr. Garritt found Ms. Jantz met the minimum

qualifications for the Administrative Assistant position. He stated this was because Ms. Jantz had worked for the second-ranking partner at Hall & Evans. Mr. Garritt was unable to say how long Ms. Jantz had worked for that partner; he just assumed it was for more than one year.

40. Ms. Klawonn agreed with Mr. Garritt's decision to disqualify Appellant from the Administrative Assistant classification.

DISCUSSION AND CONCLUSIONS OF LAW

Career Service Rule Provisions

CSR §3-42 provides:

Petition for review of disqualification decision

An applicant for employment or promotion in the Career Service may, within five (5) calendar days from the mailing of notice of the examination results, petition the personnel director to reconsider a disqualification decision for failure to meet the minimum qualification for a position. The personnel director may reverse, modify, or affirm a decision to disqualify an applicant for any legitimate reason, including failure to meet the minimum requirements of a position.

CSR§19-10 Actions Subject to Appeal

An applicant or employee who holds career service status may appeal the following administrative actions relating to personnel.

- a) Actions of the Personnel Director: Actions of the Personnel Director or a designated representative which meet any of the following criteria:
- 1) The action results in an alleged violation of the Career Service provisions of the Denver City Charter, or Ordinances relating to the Career Service, or the Personnel Rules.
 - 2) The action arises out of the examination and certification of an applicant, as provided in Section 3-40 Review and Appeals, or
 - 3) The action is one which the Personnel Director is not required to perform, and involves personal discretion or judgment.

Discussion

Because Appellant is appealing the determination that she is under-qualified for

the Administrative Assistant classification, she has the burden of proof. Appellant must establish that the decision to disqualify her application for promotion to Administrative Assistant was arbitrary, capricious, an abuse of discretion, or otherwise contrary to rule or law.

The first issue before the Hearing Officer is whether the request for administrative review was timely. CSR §3-42 clearly requires that the request be sent to the Personnel Director within five days of the mailing of the Notice of Disqualification. The facts of this case are equally clear. The Notice was sent to Appellant on August 16. She did not file her request for administrative review until August 31, two weeks later. On the face of it, Ms. Klawonn was correct in denying the request for administrative review as untimely. But these "facts" are not the end of it. The real question is whether the CSA is equitably estopped from raising the issue of timeliness of Appellant's request for administrative review by the actions of its employee, Mr. Garritt.

The courts have applied equitable estoppel to municipalities. See *Kohn v. City of Boulder*, 919 P.2d 822 (Colo. App. 1995). For estoppel to apply, the party against whom it is asserted must have, by word, or conduct, or silence when he or she has a duty to speak, induced another to change position to his or her detriment in reasonable reliance upon the words, conduct or silence of the first party. See *Margason v. Roberts*, 919 P. 2d 818, 821 (Colo. App. 1995).

The first requirement for the assertion of equitable estoppel is that it can only be asserted against the party who breached a duty that caused Appellant to change her position to her detriment. The Hearing Officer finds that this requirement has been met as Mr. Garritt is the CSA's agent. He was the analyst for the position. He permitted Appellant to supplement her application on and after the date the request for administrative review was due.

The second part of the test is whether Mr. Garritt had a duty to speak and failed to do so. Mr. Garritt testified that the CSR does not actually permit him to "reopen" applications and accept supplemental information from applicants. However, he admits that he accepts additional information in order to "help" applicants avoid the administrative review/hearing process when his decision was initially incorrect (e.g., Mr. Garritt initially disqualified Sharon Jantz and then decided she met the minimum qualifications for Administrative Assistant). The problem is, Mr. Garritt's agreement to reconsider supplemental information creates a duty towards applicants who rely upon his "informal" reconsideration to warn them of the very short time period for applying for administrative review. Otherwise, Mr. Garritt is actually harming the disqualified applicants he is attempting to "help" by accepting additional information.

Once Mr. Garritt took the "informal" action, he had a duty to inform either Appellant or Mr. DuRán that Appellant still had to protect her rights in case he did not change his mind. He did not do so. Therefore, the duty to inform Appellant was breached by his silence.

The third part of the test is the requirement that Appellant acted to her detriment by relying upon Mr. Garritt's actions or inactions. The Hearing Officer finds that this part of the test has also been met

The testimony clearly establishes that Appellant relied upon acceptance of her

supplemental information rather than file a request for administrative review on August 21, the day she first spoke with Mr. Garritt. Instead of telling Appellant that she must file her request for administrative review on that day or be considered untimely, Appellant was permitted to provide additional information over the telephone. On August 22, the day after the time for administrative review ran under CSR §3-42, Mr. Garritt told Mr. DuRán that Appellant could still supplement the information in writing, which she did the next day. Appellant was told he had not changed his mind. It was only after that Appellant requested administrative review by the Personnel Director. The fact that Ms. Klawonn eventually denied the administrative review as untimely establishes Appellant's reliance to her detriment.

The Agency argued at the hearing that the request for administrative review was still untimely. Mr. Garritt informed Appellant on August 23 of his decision the same way he received the request. His reasoning was that the contract concept "like-for-like" (i.e. written request requires written response) should be applied.

The facts do not support this assertion. Appellant sent the supplemental information to Mr. Garritt by e-mail on August 23. His response was by telephone. This is not "like-for-like."

Mr. Garritt should have, at the very least, sent an e-mail to Appellant confirming his decision. This would have given her something in "writing" which she could have attached to her request for administrative review. This would have provided Ms. Klawonn notice that Mr. Garritt had extended the time for review by at least one week. Because a final, written response to Appellant was never sent, either by e-mail or letter, the time for administrative review never began to run. Therefore, Appellant's request for administrative review was not untimely.

Since the Hearing Officer has found that the Agency is equitably estopped from raising the issue of timeliness, the Motion to Dismiss the appeal is denied.

While Appellant's request for administrative review may have been "premature" since the time never actually began to run, the Hearing Officer will not order this matter back to the Personnel Director or his designee for consideration. Time is of the essence in this case, since there is currently a new list for Administrative Assistant being compiled. Ms. Klawonn is very clear that she agrees with Mr. Garritt's decision to disqualify Appellant because Legal Secretaries and Senior Secretaries are "very different" positions. Sending the matter back to her for reconsideration is unnecessary.

The Hearing Office must decide the merits of Appellant's case. As stated above, Appellant has the burden to show that the decision to find her under-qualified for the Administrative Assistant position to be arbitrary, capricious, an abuse of discretion, or otherwise contrary to rule or law.

Appellant testified, and the Agency agreed, that she performs the duties listed in the Senior Secretary classification description. The only issue is whether Appellant performs those duties at the level equivalent to a Senior Secretary or, as a Legal Secretary, she performs those duties at a "very different" or lesser level because she performs them for attorneys rather than managers.

The Hearing Officer is troubled by the distinctions that have been made about the

work required of their secretaries by attorneys and managers. Having worked with legal secretaries, "regular" secretaries, and administrative assistants over the years, the Hearing Officer agrees with Mr. DuRán that the most important quality for all legal secretaries is the ability to learn the particular skills, if not already known, and the characteristics he stated one was born with: diligence and loyalty. These abilities and characteristics are equally important for the successful Senior Secretary and Administrative Assistant. The Hearing Officer must also respect Mr. DuRán's opinion that Appellant exhibits these qualifications.

The real question is whether Mr. Garritt's determination that those in the Legal Secretary classification do not normally have the equivalent experience of the Senior Secretary classification, or, as he stated it, "is very different" experience, is arbitrary, capricious, or an abuse of discretion.

The Hearing Officer has reviewed the testimony of Appellant, Mr. DuRán and Mr. Garritt as to how and why the decision to disqualify Appellant was made. What was of greatest importance to the Hearing Officer was the testimony from Mr. DuRán that Mr. Garritt was not clear when they spoke in August. He could not articulate the guidelines for the experience he was accepting as equivalent to a Senior Secretary. For the Hearing Officer, this demonstrated that Mr. Garritt's decisions in August were arbitrary and capricious.

Mr. Garritt continued to be vague in what he was looking for in the applications during his testimony. He denied that he was actually looking for "key words" in job descriptions. In fact, he was looking for specific terms of art (buzzwords) in the applications.

Another problem was Mr. Garritt made various critical assumptions about all the Legal Secretary applicants from the Law Department (i.e., that they did not actually work for the managers even if the applications listed the managing attorney as the supervisor; that they did not perform various job duties highlighted in the Senior Secretary classification description; that, in the ELPG at least, they are cross-trained and perform the duties for managers and line attorneys with equal proficiency), assumptions that were contradicted by the two witnesses from the Law Department, Appellant and Mr. DuRán. The inconsistency with Mr. Garritt relying upon these assumptions is underscored by the fact he subsequently found that Ms. Jantz had the requisite equivalent experience "because she worked for the second-ranking partner at Hall & Evans." However, an assumption was made here, too, i.e. that she had one year of experience at this level. He did not know how long Ms. Jantz had performed those duties.

Similar assumptions were made about Esther Vargas, the other Legal Secretary whose experience he accepted. While her application states she performs her duties for Cathy Gale, one of the supervising attorneys, there is no indication that she has performed those duties for a year or more. Mr. Garritt testified that he assumed it was for more than a year because she indicated she has been working for the City Attorney's Office since September 1998, even though she did not indicate she had been working for the supervising attorney the entire time.

The fact that Mr. Garritt made his decisions whether to (dis)qualify Appellant and other Legal Secretaries based upon assumptions upon assumptions is *per se* arbitrary

and capricious and an abuse of discretion.

The Hearing Officer acknowledges the concerns that Mr. Garritt and Ms. Klawonn have that some agency heads find the applicants for Administrative Assistant positions under-qualified. However, the conclusion that would support the decision to disqualify all Legal Secretary applicants, *i.e.*, they cannot perform at the Administrative Assistant level for any manager, or the contrary proposition that all Senior Secretaries can perform all the Administrative Assistant duties at the requisite level without further training, is flawed. For instance, the City Attorney might want an Administrative Assistant with a legal secretary background, even though Mr. Garritt said he would have automatically disqualified Mr. Wortham's current Administrative Assistant for that very reason.

Rather than automatically disqualifying Legal Secretaries because they don't work for managers, the better way for addressing the concerns about the actual abilities of the applicants is at the testing and interviewing levels. Here the applicants are given the chance to show exactly what skills they have and how well they are able to meet the needs of the individual agency head.

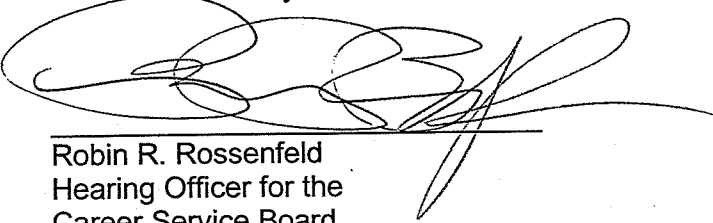
For the foregoing reasons, the Hearing Officer concludes that the decision to disqualify Appellant from taking the Administrative Assistant test is arbitrary and capricious and an abuse of discretion.

The last question is the remedy for Appellant. Since the promotional list for Administrative Assistant has been reopened during the pendency of this appeal, it is only reasonable that Appellant be permitted to take the examination for the current list. If she passes that examination, she should be placed on the promotional list with the other successful candidates.

ORDER

Therefore, for the foregoing reasons, the Hearing Officer GRANTS the appeal. The CSA is ORDERED to permit Appellant to sit for the examination for the current Administrative Assistant promotional list. If the examination has concluded before this Order is sent to the parties, it is further ORDERED that Appellant be given the examination as soon as possible and that the examiners not be told of the circumstances leading to Appellant being given the opportunity to take the examination.

Dated this 26th day of December 2001.



Robin R. Rossenfeld
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 FINDINGS AND ORDER by depositing the same in the U.S. mail, this ~~27th~~ day of December 2001, addressed to:

Frances Trujillo
2343 Julian St.
Denver, CO 80211

Anne E. Whitney, Esq.
1326 Vine Street
Denver, Co 80206

I further certify that I have forwarded a true and correct copy of the foregoing FINDINGS AND ORDER by depositing the same in interoffice mail, this ~~27th~~ day of December 2001, addressed to:

Robert M. Liechty
Cross & Liechty, P.C.
400 South Colorado Blvd., Suite 900
Denver, CO 80246

Office of the City Attorney
Employment Law Division
1437 Bannock St., Room 352
Denver, CO 80202

Sandra S. Klawonn
Career Service Authority

Charlotte A. Smith