

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

Appeal No. 327-01

DISMISSAL ORDER

IN THE MATTER OF THE APPEAL OF:

BYRON WEST, Appellant,

v.

Agency: E/Government, Office of Television and Internet Services, and the City and County of Denver, a municipal corporation.

Appellant filed her Grievance Appeal to the Career Service Board Hearing Officer on September 14, 2001. The Agency filed a Motion to Dismiss on November 9, 2001. Appellant was ordered to respond by November 26, 2001. Appellant has not responded to the Motion to Dismiss. Being fully advised in the matter, the Hearing Officer finds as follows:

Appellant stated in her appeal that Dan Jarvis, the Chief Information Officer of the City and County of Denver, and Appellant's immediate superior, violated CSR §16-50 A. 18 by violating Executive Order No. 112 on Workplace Violence and CSR §16-51 A. 4) by failing to maintain a satisfactory relationship with a co-worker, other City and County employees or the public.

The Agency, in its Motion to Dismiss, first states that this matter must be dismissed because Appellant did not comply with requirements of CSR §18-12 3 by filing her second-level grievance with Mr. Cauthen in a timely manner in that she sent Mr. Cauthen a copy of her August 23 grievance to Mr. Jarvis on September 12.¹

CSR §18-12 provides, in relevant part:

Section 18-12 Grievance procedure

If a work related dispute was not resolved through alternative dispute resolution or if alternative dispute resolution was not previously attempted and a career service employee has a grievance as defined in Section 18-10 (a) of this rule, the employee may file a grievance according to the following procedures

¹ The Agency also talks about the time limitation requirements of CSR §22(a)(2). This citation is obviously in error. The Hearing Officer believes this to be a reference to CSR §19-22 a) 2), which requires that the Notice of Appeal be filed with the Hearing Officer no more than ten days after the action of the agency head becomes final.

3. Filing with Agency Head: If the response of the immediate supervisor does not resolve the grievance and the employee wishes to pursue the grievance further, employee shall present the grievance to the head of the agency, or designee, in writing within ten (10) days after receiving the decision of the immediate supervisor....

If the immediate supervisor has not responded to the grievance within ten (10) calendar days and the employee desires to pursue the grievance further, the employee must present the grievance in writing to the head of the agency or designee no later than ten (10) calendar days after the supervisor's response was due....

The head of the agency or designees shall consider the grievance and shall give the employee dated, written notice of a decision within ten (10) calendar days from the date contained on the certificate of mailing or certificate of hand delivery....

The problem with this argument is that Mr. Jarvis is both Appellant's direct supervisor and the agency head. The copy of the grievance Appellant sent to Mr. Cauthen can only be considered a courtesy copy. It is irrelevant to this proceeding. As this Hearing Officer previously found in *In the Matter of the Appeal of Byron West*, CSA Appeal No. 336-01:

CSR §18-12 requires that a grievant file her appeal first with her direct supervisor and the, if the direct supervisor does not respond within ten days or the response is insufficient, the grievant may file a second step grievance with the agency head or his designee. The CSR does not provide for alternatives to the second step grievance for persons who report directly to an agency head. To require such grievants to file twice with the same person is a redundancy.

Mr. Jarvis is both the appellant's direct supervisor and the agency head. Deputy Mayor Cauthen, who appears to have received a copy of the grievance as a courtesy, is not actually a party to whom the second step of a grievance can be directed despite the fact that Appellant filed his name onto the grievance appeal form as "second step." There was no need for Appellant to resubmit her grievance to Deputy Mayor Cauthen or await his reply. Appellant's right to appeal the grievance matured ten days after Mr. Jarvis did not respond. Appellant appropriately filed her grievance appeal with the Hearings Office at that time.

CSR §18-12 4. requires that a grievant who has not received satisfaction from the agency head within ten days has another ten days to submit her grievance appeal to the Hearing Officer, pursuant to CSR §19-22 a). Mr. Jarvis did not respond to the grievance. Appellant's right to appeal ripened on September 4, 2001, the first business day after the tenth day (the Sunday before Labor Day) after Appellant filed her grievance with Mr. Jarvis. She had ten days from then to file her appeal with the Hearing Officer. This appeal was filed on September 14. It was timely. The Hearing Officer must now proceed to the merits of this grievance appeal.

Appellant claims in her grievance that Mr. Jarvis violated two provisions of CSR Rule 16. However, Rule 16 pertains to the grounds for disciplining employees, up to an including dismissal. Rule 16 does not create an affirmative basis for an employee grievance. As previously stated by the Hearing Officer in *In the Matter of the Appeal of Donnie D. Dollison*, CSA Appeal No. 141-00:

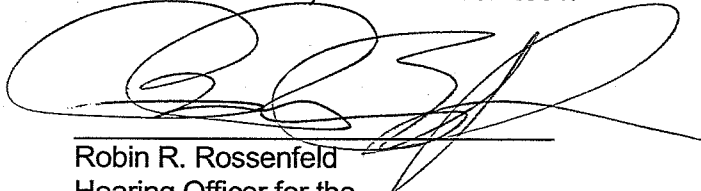
[...] Rule 16, entitled "Discipline" provides for discipline in the event of violation of rule (sic) 16-50 by an employee. It does not empower an employee to impose discipline on another employee not under his charge. Appellant has no standing or authority to impose discipline on another employee. While he may request such discipline through the grievance process, as Appellant did here, the Career Service Rules do not provide for the appeal of such a request, in the event of a denial.

The Hearing Officer's jurisdiction is very limited. She can only hear grievances "which result in an alleged violation of the Career Service Amendment, or Ordinances relating to the Career Service, or the Career Service Personnel Rules." CSR §19-10 d). There are no Rules, Charter Amendments or Ordinances that require an agency to discipline an employee or to comply with an Executive Order. Simply put, the Hearing Officer does not have the power to mete out discipline against another employee. See, *In the Matter of the Appeal of George w. Butler*, CSA Appeal No. 130-98; *In the Matter of the Appeal of Charlesetta Crutchfield*, CSA Appeal No. 13-01.

Because Appellant does not have standing to require Mr. Jarvis to issue a disciplinary action against himself (or any other employee, for that matter), the Hearing Officer must dismiss this case for failure to state a claim upon which relief can be granted.

The appeal is DIMISSED with prejudice.

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 DISMISSAL ORDER by depositing the same in the U.S. mail, this 28th day of December 2001, addressed to:

Byron West
2390 Syracuse St., Suite 100
Denver, CO 80207

I further certify that I have forwarded a true and correct copy of the foregoing DISMISSAL ORDER by depositing the same in interoffice mail, this 28th day of December 2001, addressed to:

R. Craig Hess, Esq.
Assistant City Attorney
1437 Bannock Street, Room 353
Denver, CO 80202-5375

Dan Jarvis
E/Government

Charlotte A. Smith