

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

Appeal No. 26-05

ORDER DISMISSING APPEAL

IN THE MATTER OF THE APPEAL OF:

GIL YARDENY,
Appellant,

vs.

DENVER AUDITOR'S OFFICE

Agency, and the City and County of Denver, a municipal corporation.

On May 16, 2005 the Agency filed a Motion to Dismiss. The Appellant responded on May 23, 2005. Having considered the Motion, Response thereto, and being otherwise informed in this matter, the Hearings Officer finds and orders as follows.

The basis for the Agency's Motion to Dismiss is the Appellant's requests for relief. In his Appeal, the Appellant requests the following remedies: to have his supervisor and management reprimanded; to have certain discriminatory work restrictions removed; and to order the Appellant transferred. In his Pre-hearing Statement, the Appellant seeks to have his supervisor terminated and seeks an order to have the Appellant transferred. In his Response, the Appellant additionally seeks a supplemental investigation into his allegations, in addition to the investigation already conducted by the Career Service Authority.

The Hearings Officer has no authority to impose discipline demanded by one employee against another, such as the removal of Appellant's supervisor. In re Chappell, CSA 02-02, 3 (3/22/02), *citing* In re Crutchfield, CSA 13-01 (4/13/01), In re West, CSA 327-011 (12/26/01).

The Appellant's next request for relief, to have discriminatory work restrictions removed, requires the Appellant state a colorable claim of discrimination. An employee cannot create jurisdiction over a case simply by uttering the words "harassment" or "discrimination." There must be some basic statement of facts tending to make a colorable claim that the action complained of was taken against the employee because of membership in one of the protected classes. In re Hull, CSA 139-02, 2 (9/18/02), *citing* In re Douglas, CSA 317-01 (4/3/02), In re Montabon, CSA 21-02, 7 (11/8/02). The actions for which the Appellant seeks relief are stated

in his Appeal as his being singled out for the following requirements: 1. that he alone provide doctor's notes for sick leave ; 2. accounting for his work time by email versus other auditors' placing a checkmark next to their name ; 3. the Agency's requiring pre-approval of vacation; 4. requiring accounting for all work time, including restroom breaks.

The Appellant states he is discriminated against because of his religion, and because of a physical disability. [Appellant's Pre-hearing Statement]. The Appellant did not state any connection between any of the four demands on him with his membership in a protected class as is required by the aforementioned cases. With respect to religious discrimination the Appellant stated "super has made remarks re my being Jewish several times." With respect to discrimination based upon disability, the Appellant states "Super has made my life a living Hell while I was on W.C." Neither statement creates the slightest nexus between any of the Agency actions, above, and the Appellant's membership in a protected class.


As to his request to transfer, the Hearings Officer is without jurisdiction over the an employee's work assignment. In re Page, CSA 191-03, 5 (2/3/04).

Finally, the Hearings Officer has no jurisdiction to require Career Service Authority to establish an independent committee to act on behalf of an employee. See, e.g. In re Kanan, CSA 09-02, 7 (3/18/02)(no authority to require CSA to establish independent interviewing committee).

Because the Hearings Officer has no jurisdiction to grant any of the relief requested by the Appellant, the Agency's Motion to Dismiss must be GRANTED, and the Appeal is ORDERED to be DISMISSED WITH PREJUDICE.

The Agency's pending Motion for More Definite Statement is rendered moot by this Order.

Dated this 2ND day of June, 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 2nd day of June, 2005, addressed to:

Mr. Gil Yardeny
6102 S. Jamaica Circle
Englewood, CO 80111

I further certify that I have forwarded a true and correct copy of the foregoing **ORDER DISMISSING APPEAL** by depositing same in interoffice mail this 2nd day of June, 2005, addressed to:

Robert Wolf, Esq.
Litigation Section
201 West Colfax Avenue Dept. 1108
Denver, CO 80202

Mr. Dennis Gallagher
Denver Auditor's Office


Laurie A. Cromie