

**HEARING OFFICER, CAREER SERVICE BOARD
CITY AND COUNTY OF DENVER, COLORADO
Appeal No. 44-10**

**ORDER OF DISMISSAL
(ERRATA)**

IN THE MATTER OF THE APPEAL OF:

JENNIFER ZACKER, Appellant,

vs.

OFFICE OF ECONOMIC DEVELOPMENT, CONTRACT COMPLIANCE DIVISION,
and the City and County of Denver, a municipal corporation, Agency.

The Agency has moved to dismiss this appeal for lack of jurisdiction. Appellant has responded, objecting to the motion on various grounds.

This is an appeal of an overall “below expectations” Performance Enhancement Progress Report (PEPR) dated May 17, 2010. By amendment to the Career Service Rules effective January 1, 2010, only evaluations with an overall rating of “Failing” may be appealed. CSR § 19-10 A.2.c. The word “overall” in this context has consistently been interpreted as the rating listed on the first page of the PEPR.

Appellant argues in her response that her PEPR does not contain a single overall rating, but she suspects that rating would be “needs improvement”, a rating using a previous performance scale. In fact, the PEPR does use the phrase “overall rating” in some of the performance categories. In any event, the only rating subject to an appeal is the final rating listed on the first page of the PEPR form. Here, that rating is “below expectations.” [Agency’s Motion to Dismiss, Exh. 1.] While Appellant did not file the PEPR’s first page with her appeal, she does not dispute the accuracy of Exhibit 1.

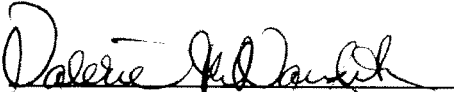
In her supplemental response to the motion, Appellant argues that the appeal form contains only a space for “grievance of a ‘needs improvement’ PEPR”, not a “failing”, lending legitimacy to the existence of jurisdiction here. However, jurisdiction is created by the Career Service Rules, and cannot be created by any other means, including an outdated appeal form. Appellant also states that associated documents offered but not accepted for filing would have identified why the rating was arbitrary, capricious and without rational basis or foundation. The cited rule requires only a statement of the reason for an appellant’s belief that the rating is improper. CSR § 19-20 B.4. Appellant satisfied that requirement on her appeal form. Since there is no issue of fact as to the existence of jurisdiction, the absence of supporting exhibits does not affect the disposition

of the motion to dismiss. Since the Jan. 1, 2010 amendment of the Career Service Rules, jurisdiction exists only for an overall rating of **“failing”**.

Order

Based on the foregoing findings and conclusions, the appeal is DISMISSED based on the lack of jurisdiction over the “below expectations” performance rating.

Done this 15th day of July, 2010.


Valerie McNaughton
Career Service Hearing Officer

I hereby certify that I have forwarded a true and correct copy of the foregoing order to the following on this 15th day of July, 2010:

Jennifer Zacker, jenzacker@sbcglobal.net (via email)
City Attorney's Office at Dlefilng.litigation@denvergov.org (via email)
Joanne Greek, Joanne.Greek@denvergov.org (via email)

