

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

Appeal No. 110-04

ORDER

IN THE MATTER OF THE APPEAL OF:

GARY BREEDEN,
Appellant,

vs.

Denver Department of Public Works, Solid Waste Management Division,
Agency,
and the City and County of Denver, a municipal corporation.

The Agency filed its Motion to Dismiss on October 13, 2004. The Appellant Responded on October 19 with his "Appellant's Objection to Agency's Motion to Dismiss." The Agency then replied with its "Agency's Response to Appellant's Objection to Agency's Motion to Dismiss" on October 20, 2004. The Hearings Officer has considered the filings in this matter and is otherwise informed.

The essential facts are not disputed. The Appellant is employed by the Agency as a Senior Utility Worker. He was temporarily assigned as an Equipment Operator in June, 2002. On June 30, 2004, the Appellant was notified that he was to return to his position as a Senior Utility Worker. The Appellant requests a return to Equipment Operator status, claiming the Agency violated CSR 7-9, 7-22, 7-62 and 7-80.

CSR 7-9, 7-22, and 7-62 are inapplicable. CSR 7-9 does not exist in the Career Service Rules. CSR 7-22 and 7-62 concern the Career Service Authority's auditing of individual positions. It is not in the realm of the Hearing Officer's jurisdiction to grant the relief of reclassification under those rules.

CSR 7-80 states "An appointing authority may assign the duties of a vacant higher-level job classification to an employee in a lower job classification for a period of 180 consecutive calendar days. Assignments for periods longer than 180 consecutive calendar days require the approval of the Personnel Director or designee. "

The Agency may have violated the terms of CSR 7-80 if it failed to obtain approval of the Personnel Director or her designee. That factual determination is not established in the motion or responses. Nonetheless, even assuming there was no approval to continue the temporary assignment beyond 180 days the Appellant could have complained on day 181, or anytime thereafter, that the Agency failed to comply

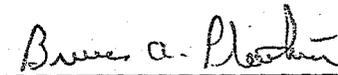
with CSR 7-80. Instead he accepted the extended increase in pay for an additional one and one half years, while failing to act on the Agency's alleged continuing violation. This failure to act is a waiver of any right the Appellant may have had. Moreover, had the Appellant complained earlier, the only remedy would have been to return him to his prior position and pay grade.

Therefore, because the Appellant waived his right to protest his continued employment as Equipment Operator his appeal is not timely. In addition the Hearings Officer finds he is without jurisdiction to grant the relief requested, i.e., returning the Appellant to Equipment Operator.

As the Agency filed its motion timely, the Appellant's remaining contention that the Agency delayed unnecessarily is without merit.

The Hearing Officer therefore ORDERS this appeal to be DISMISSED WITH PREJUDICE.

Dated this 28thth day of
October, 2004.



Bruce A. Plotkin
Hearing Officer
Career Service Board