

CAREER SERVICE BOARD, CITY AND COUNTY OF DENVER, STATE OF
COLORADO

Appeal No. 91-07

FINDINGS AND ORDER (INTERLOCUTORY APPEAL)

IN THE MATTER OF THE APPEAL OF:

LOIS BROOKS,

Appellant/Respondent,

vs.

**DEPARTMENT OF AVIATION, Agency, and the City and County of Denver, a
municipal corporation,**

Agency/Petitioner.

This matter is before the Career Service Board ("Board") on the Agency's Petition for Interlocutory Appeal pursuant to CSR 19-61 E. The Board has reviewed and considered the full record before it and **AFFIRMS** the Hearing Officer's Order Denying Agency Motion to Dismiss, dated January 22, 2008, on the grounds outlined below.

I. FINDINGS

Appellant was hired by the Agency as an ASA III on June 11, 2007. Under the Career Service Rules, her 6 month probationary period would end on December 10, 2007. While Appellant was on probation, the Career Service Authority (CSA) conducted a classification audit and reclassified her ASA III position (610-C) to the higher position of Landside Service Agent I (612-N). The classification action was signed by Stephen Adkison on November 6, 2007. (**Record, p. 18**).

On November 19, 2007, Appellant left DIA and took a position with Facilities Management as an ASA IV (612-C). This move would be a promotion from an ASA III position, but a demotion from a Landside Service Agent I position. It is not clear when Appellant learned that her position at DIA had been upgraded; she did not sign a personnel action form acknowledging the classification change until November, 28, 2007, after she had already transferred to Facilities Management. (**Record, p. 19**). Appellant's separation notification from DIA indicates the transfer was a promotion (**Record, p. 53**), while the CSA personnel action form completed after the transfer indicates a demotion. (**Record, p. 19**). In addition, an email from Appellant dated

November 5, 2007, indicates her belief that she was accepting a promotion at Facilities Management. (**Record, p. 66**). At this stage of the proceedings, it is not clear whether Appellant knew prior to November 19th that she was actually taking a demotion and whether that demotion was voluntary.

On December 4, 2007, Facilities Management sent a written request to the CSA Personnel Director asking for a 6 month extension of Appellant's probation. The Personnel Director approved the request on December 12, 2007, two days after Appellant's original probationary period ended. (**Record, p. 20**). Appellant was dismissed by Facilities Management on December 11, 2007 for "the good of the service." (**Record, p. 43**).

The Board agrees with the Hearing Officer that Appellant's status as a probationary or career service employee on December 11, 2007 is not clearly established. The Agency's assertions notwithstanding, there are factual issues as to whether the transfer to Facilities Management was a promotion or a voluntary demotion, and whether Appellant's probationary period was properly extended beyond December 10th. Moreover, this is not the kind of appeal contemplated by CSR 19-61 E. The Hearing Officer has the right to determine, in the first instance, whether he has jurisdiction to hear an appeal, and when that jurisdiction turns on resolving factual issues, the Hearing Officer must determine those facts before the Board will intervene on an interlocutory appeal.

ORDER

IT IS THEREFORE ORDERED that the Agency's Petition for Interlocutory Appeal is **DENIED**, the Hearing Officer's Order Denying Agency Motion to Dismiss, dated January 22, 2008, is **AFFIRMED**, and this matter is **REMANDED** for further proceedings consistent with the Board's Findings herein.

SO ORDERED by the Board on April 3, 2008, and documented this
9th day of April, 2008.

BY THE BOARD:



Tom Bonner, Co-Chair

Board members concurring:

Kit Williams
Luis Toro
Nita Henry

CERTIFICATE OF DELIVERY

I certify that I delivered a copy of the foregoing **FINDINGS AND ORDER** on April 10, 2008, in the manner indicated below, to the following:

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