

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

Appeal No. 294-01

DISMISSAL AND ORDER

IN THE MATTER OF THE APPEAL OF:

THEODIS HALL, Appellant,

v.

Agency: Career Service Authority and the City and County of Denver, a municipal corporation.

This appeal is before the Hearing Officer for consideration of a Show Cause Order issued on September 13, 2001. The Appellant has now fully responded to the Show Cause Order. The Agency did not file a response. The Hearing Officer has considered the appeal documents, the applicable rules and the Appellant's response.

The issue before the Hearing Officer is whether the relief requested by the Appellant is within the jurisdiction of the Hearing Officer.

Applicable Denver City Charter and Career Service Rule Provisions

Both the Denver City Charter and the Career Service Rules concerning the creation of classifications within the system are relevant here. The Rules in effect at the time of Appellant's Request for Classification Audit¹ provide:

Section 7-10 Charter Provisions (Denver City Charter, Section C5.26)

The charter provisions relating to the classification plan as follows:
"The City Council annually shall by ordinance enact, after annual recommendations are made by the Career Service Authority, classification and pay plans for all positions in the Career Service, and for positions not in the Career Service, based upon the duties of the several positions..."

Section 7-20 Classification Plan

The classification plan comprises a schematic list of classes supported by written specifications setting forth the duties and responsibilities of each class and the qualifications necessary for appointment to a position of that class.

¹ According to Appellant's Response to the Order to Show Cause, he submitted his Request for Classification Consideration in January 2000.

Section 7-40 Definitions

7-41 Class

A class shall comprise one or more positions that are so nearly alike in the essential character of their duties and responsibilities that the same pay scale, title, and qualification requirements can be applied and they can fairly and equitably be treated alike under like conditions for all other personnel purposes. The same qualification requirements shall be applied to all positions in a class regardless of the agency in which the position is located.

7-42 Class Title

The title of a class shall be the official title of every position allocated to that class for personnel purposes. Organizational titles may be used for other purposes.

7-43 Class Specification

The class specification shall state the characteristic duties, responsibilities, and qualification requirements which distinguish a given class from other classes. The specification shall be descriptive, but not restrictive; that is, the class specification shall describe the more typical types of work which may be allocated to a given class, but shall not be construed to restrict the assignment of other duties related to the class.

Section 7-60 Administration of the Plan

7-61 Revised Municipal Code Provisions

(Effective 1999; Revised Municipal Code, 1982 codification, Section 18-37)

"Basis for classification plan. The position of every employee of the City in the career service shall be allocated to a class in the classification plan adopted herein. Such allocation shall be made on the basis of the duties of the position and accordance with the rules of the Career Service Board."

7-62 Allocation of Positions

When a position is created, the appointing authority shall send the Career Service Authority a request for classification of the position with a description of the duties and responsibilities and qualifications required. The Career Service Authority shall allocate the position to the proper class after analysis and evaluation of the kind and level of duties and responsibilities without regard to the agency for which the work is done, or budgetary availability of money.

7-63 Creation of Provisional Class

If there is no class to which a **new position** can properly be allocated, the **Career Service Board is authorized** "to create a provisional class to which the position...may be allocated and to designate the pay grade applicable to such class..." (Subsection 141.7-1 of the Revised Municipal Code). "No provisional class shall exist for longer than three (3) months." (Subsection 141.7-2 of the Revised Municipal Code). (emphasis added)

7-65 Purpose of Reallocation

Reallocation is intended to be used to recognize change in classification resulting from:

- a) Gradual change of duties: A gradual change in the level of duties and responsibilities, or
- b) Operational change of agency: A complete or partial reorganization affecting numbers of employees, significant additions of new equipment, or substantial changes in methods or procedures affecting numbers of employees, or
- c) Changes in classification plan: A classification study or maintenance review resulting in changed class specifications.

Reallocation is not an alternative to promotion or a substitute for disciplinary action.

7-66 Reallocation of Positions

- a) Management responsibilities: The appointing authority is responsible for assuring that employees are assigned duties that are appropriate to their class. Where a significant change in the level or kind of duties and responsibilities is assigned to an agency or is to be assigned to an individual, except for a temporary period as described in Subsection 7-68 Temporary Assignment of Duties, or by the addition of duties and responsibilities that are incidental to the primary duties and responsibilities, such change shall be reported to the Career Service Authority for consideration of the effect on the classification of the position involved.
- b) Basis for reallocation of individual positions: Filled positions may be reallocated from one class to another class on an individual basis where all of the following conditions are found to exist:

- 1) Significant changes have occurred in the level of duties and responsibilities of the position, rather than changes in the performance of the incumbent.
 - 2) Such change has been gradual, rather than resulting from assignments to a specific employee in a short period of time in accordance with Paragraph 7-68 a) Temporary Assignment of Duties.
 - 3) Such changes in duties and responsibilities are of a permanent nature and have been performed in the position for ninety (90) days or more.
- c) Request for review of individual position: The appointing authority, the Career Service Authority, or an incumbent may initiate a request for review of a position if permanent and significant change has gradually occurred in the duties and responsibilities. Such requests shall be submitted only during an open filing period from January 1 through January 31 of each year. Upon a finding that extraordinary conditions exist, the personnel director may waive this limitation. The appointing authority or incumbent shall use the request form prescribed by the Career Service Authority.
- d) Review of individual position: Following the open filing period, the Career Service Authority shall review the changes in the position to determine if the facts presented warrant further consideration, based on the position description and a current performance enhancement plan. Positions for related positions may be requested if needed.

* * *

- g) Report on classification decision: The Career Service Authority shall advise the appointing authority and all affected employees of the classification decision.
- h) Request for review of classification decision: The appointing authority or any affected employee who disagrees with a classification decision may, within ten (10) calendar days from the mailing of the classification decision, request a review of the decision by the Personnel Director. The request for review shall state all of the following:
- 1) the specific reasons for disagreement;
 - 2) the title of the class specification involved; and

- 3) the specific rule, ordinance, or charter provision violated; and
- 4) the action sought.

The Personnel Director or his or her designee shall review the protest and shall inform the applicant of his decision. Any incumbent or appointing authority who is aggrieved by this action of the Personnel Director or the designee may appeal in accordance with Rule 19 APPEALS. The period of time for filing the appeal shall be computed in accordance with subparagraph 19-22 a) 2).

Section 7-70 Maintenance of the Plan

7-71 Review of the Plan

The Career Service Authority shall make periodic reviews of the classification plan and shall prepare, for the consideration of the Career Service Board, specifications for new classes of positions, revised specifications of existing classes, changes in class titles, changes in pay grades of classes, and recommendations for abolishing classes.

7-72 Public Notice of Changes

The Personnel Director shall provide those appointing authorities who are affected with a draft of proposed changes in the plan, and notice shall be posted on appropriate bulletin boards at least ten (10) calendar days prior to presentation to the Career Service Board. Those who indicate a desire to be heard by the Board will be notified of time and place of Board meeting.

7-73 Action by the Career Service Board

The Board, after consideration of the proposed changes in the plan, may approve, modify, or disapprove such changes, provided that when a new class is created, or the pay grade of an existing class is changed, such action shall be subject to Council approval within three (3) months from the effective date of the action, (emphasis added)

7-74 Notice of Provisional Change in the Classification Plan (Effective 1966; Revised Municipal Code, 1982 Codification, Section 18-42 (c))

"The Career Service Board shall give the mayor, the auditor, and the City Council written notice of the creation of any provisional class, or change in the pay grade of any class together with the rates of pay applicable thereto and such notice shall be authority for the auditor to pay incumbents of positions affected by such change for a period not to exceed three (3) months."

Section 19-10 Actions Subject to Appeal

The following administrative actions relating to personnel matters shall be subject to appeal:

- a) Actions of the Personnel Director: Actions of the Personnel Director or a designated representative. Which meet all of the following criteria:
 - 1) The action results in an alleged violation of the Career Service provisions of the Denver City Charter, or Ordinances relating to the Career Service, or the Personnel Rules.
 - 2) The action arises out of:
 - (b) the classification of a career service position, as provided in paragraph 7-66 h) Request for review of classification position.
 - 3) The action is one which the Personnel Director is not required to perform, and over which personal discretion or judgment in its performance is permissible.

Discussion

The Hearing Officer's jurisdiction to hear a specific matter and grant relief is limited by the authority granted to her in the CSA Rules. The Hearing Officer may not act in excess of her jurisdiction, no matter how sympathetic she might be to the Appellant's position.

The law in this case is clearly settled. None of the provisions cited by Appellant as the basis for the Hearing Officer's jurisdiction affect this rule of law.

As this Hearing Officer discussed in several prior decisions, the power to create and maintain the classification plan is vested in the Career Service Authority. (See, In the Matter of the Appeals of Leola Davis, et al., CSA Appeals 24-00 through 27-00). Both the Career Service Board and the City Council must approve the classification plan. Under Charter Provision c5.26, as adopted in CSR §7-10, the City Council "shall by ordinance enact...classification and pay plans for all positions in the Career Service." The Career Service Authority is vested with the authority to make periodic reviews of the classification plan and prepare, for the consideration of the Career Service Board, specifications for new classes of positions. (CSR §7-71) The Board, after consideration of the proposed changes in the plan, may approve, modify, or disapprove such changes. City Council approval must occur within three (3) months from the effective date of the action. (CSR §7-73) If there is no class to which a new position can properly be allocated, the Career Service Board is authorized to create a provisional class to which the position may be allocated. (Revised Municipal Code §141.7-1, CSR §7-63)

This statutory scheme means that the power to create, modify or otherwise alter the classification plan rests with the Career Service Board, not with the Hearing Officer or the Career Service Authority. The Board made this clear in In the Matter of the Appeal of David L. Stever, CSA Appeal 79-96, when it held "it is at the discretion of the Career Service Board to approve the creation of classifications and not within the purview of the Hearing Officer." This has been reiterated by other Hearing Officers at least twice. In the Matter of the Appeal of Margo Larson, et al., and Don Brown, et al., CSA Combined Appeals 177-98 and 176-98, the Hearing Officer stated "(I)t is well settled within the Career Service that the Hearing Officer does not have jurisdiction over pay rate decisions. This includes the creation of new classifications." The Hearing Officer in In the Matter of the Appeal of Molly Austin-Flaherty, CSA Appeal 23-99, wrote, "(T)he Career Service Board has specifically clarified that it is not within the Hearing Officer's discretion to approve creation of classifications." See also In the Matter of the Appeal of Doug Golden, CSA Appeal 11-00, In the Matter of the Appeal of Barbara Curry-Owens, CSA Appeal 13-00.

The Hearing Officer is bound by the declaration of the Career Service Board that it, and not the Hearing Officer, has the discretionary jurisdiction to create a new classification that reflects the job responsibilities the Appellant wishes the Hearing Officer to review. The relief that the Appellant is requesting is for the Hearing Officer to create a new classification; this is outside her jurisdiction to provide. The only recourse for the Appellant and others he claims are similarly situated throughout the City is to apply to the Career Service Board for consideration of a provisional or permanent addition of a classification that reflects duties above the current Analyst Specialist classification but below the Agency Human Resources Director and/or Personnel Service Supervisor position Appellant originally requested he be reclassified to.

Therefore, the Hearing Officer DISMISSES the appeal with prejudice as the relief he is requesting (the creation of a new classification) is outside the Hearing Officer's jurisdiction.

Dated this 11th day of October 2001.



Robin R. Rossenfeld
Hearing Officer for the
Career Service Board