

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

Appeal No. 43-08 A

FINDINGS AND ORDER

IN THE MATTER OF THE APPEAL OF:

GARY LUFT,

Appellant/Petitioner,

vs.

DEPARTMENT OF AVIATION, and the City and County of Denver,

Agency/Respondent.

This matter is before the Career Service Board on Appellant's Petition for Review. The Board has reviewed and considered the full record before it and **AFFIRMS** the Hearing Officer's Decision of July 24, 2008, on the grounds outlined below.

I. BACKGROUND

On April 9, 2008, the Agency notified employees of a new bidding procedure for shift and work assignments. Employees were given until April 16th to submit their bids by ranking 13 shift and work assignments in order of preference, 1-13. The Agency would then make assignments based on employee choices and seniority. Appellant was on vacation April 9-15. When he returned to work on April 16, he was given until the end of his shift to submit his preferences. He did so and received his third choice; his first and second choices were assigned to employees with greater seniority. On April 28, Appellant filed a grievance, but the Agency failed to respond. Appellant then filed an appeal with the CSA Hearings Office. At a pre-hearing conference, the Agency provided Appellant with a response to his grievance and the Hearing Officer dismissed this appeal.

II. FINDINGS

The Career Service Rules clearly provide the Hearing Officer with jurisdiction over grievances to which an agency has failed to respond. See, CSR 18-40 E. 2. and CSR C19-10 A. 2. b.(ii). Implicit within these rules is the grant of authority to the Hearing Officer to order an agency to respond. Here however, when the Agency provided Appellant with a response to his grievance during the pre-hearing conference,

Appellant's requested remedy – to compel the Agency to respond – became moot. The issue in this appeal is whether there was any other remedy the Hearing Officer had authority to grant.

The record contains a transcript of the pre-hearing conference and a lengthy discussion between the Hearing Officer and Appellant about alternative remedies that Appellant was seeking in his appeal. At times, Appellant advised the Hearing Officer that he wanted to be given his first or second bid preference, but at other times he wanted the Agency to change its bidding procedure. As another alternative, Appellant indicated that he wanted the Agency to re-bid the shift assignments because he had only one day to consider his preferences due to his vacation, while other employees had a week. Appellant did not articulate how a re-bid would change the outcome of the assignments in his favor when seniority was the determinative factor and it was undisputed that Appellant's first and second choices were given to employees with greater seniority. Regardless of which remedy Appellant really wanted, the Board finds that the Hearing Officer did not have authority to grant any of them.

CSR 19-10 A. 2. b. (i) provides as follows:

Appeal of Complaint or Grievance: An employee may file an appeal following a formal complaint or grievance only as described below:

b. Grievance:

- i. Any grievance which results in an alleged violation of the Career Service Rules ("Rules"), the City Charter, ordinances relating to the Career Service, executive orders, or written agency policies and negatively impacts the employee's pay, benefits or status;

In this case, Appellant failed to demonstrate that the bid process used by the Agency in April 2008 violated a Career Service Rule, Charter provision, ordinance, executive order or written agency policy and negatively impacted his pay, benefits or status. Therefore, the Hearing Officer correctly determined that he did not have jurisdiction over the subject matter of Appellant's grievance and, except for ordering the Agency to respond to the grievance, had no authority to grant Appellant any other relief.

III. ORDER

IT IS THEREFORE ORDERED that the Hearing Officer's Decision of July 24, 2008, dismissing Appellant's appeal with prejudice, is **AFFIRMED**.

SO ORDERED by the Board on December 4, 2008, and documented this
12th day of December, 2008.

BY THE BOARD:


Luis Toro, Co-Chair

Board Members Concurring:

Felicity O'Herron
Nita Henry
Tom Bonner

Patti Klinge did not participate in the Board's decision.