

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

Appeal No. 42-06

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**DECISION**

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IN THE MATTER OF THE APPEAL OF:

**ROSEANNE MARTILLARO,**  
Appellant,

vs.

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

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The hearing in this appeal was commenced on October 26, 2006 before Hearing Officer Valerie McNaughton. Appellant Roseanne Martillaro was present and represented by Richard Martillaro, Esq. The Agency was represented by Assistant City Attorney Joseph A. DiGregorio. Having considered the evidence and arguments of the parties, the Hearing Officer makes the following findings of fact, conclusions of law and enters the following decision:

**I. STATEMENT OF THE CASE**

Appellant Roseanne Martillaro appeals her separation dated June 30, 2006 from the position of Workforce Development Advisor for the Division of Workforce Development, Office of Economic Development for the City and County of Denver (the Agency). Appellant filed a timely appeal of the action on July 13, 2006, alleging that the separation violated Rule 14 of the Career Service Rules (CSR) governing layoffs. The Agency asserts that Appellant was separated on the end date of her limited position.

Exhibits 1 - 8 were admitted by stipulation of the parties. Exhibit 9 was admitted over the objection of the Agency.

**II. FINDINGS OF FACT**

The facts in the appeal are largely undisputed. Appellant was hired on Jan. 16, 2001 as an Analyst Specialist, pay grade 809-A, in a limited position, with an end date of Jan. 16, 2002. [Exh. 1.] Upon Appellant's successful completion of probation on July 15, 2001, she attained Career Service status. Her position was extended annually thereafter until Appellant accepted a demotion to the position of Workforce

Development Advisor, pay grade 806-A, based on her supervisor's statement that "if I took the demotion, there wouldn't be a layoff situation." [Testimony of Appellant; Exh. 4.] An email from the Agency Human Resources Administrator confirmed that "Roseanne Martillaro demoted into an 806-A Workforce Development Advisor during a time we were considering layoffs in her unit." [Exh. 5.] The end date of Appellant's new position was June 30, 2006. The Agency did not extend the position beyond that end date, and on July 1, 2006 Appellant was terminated. Appellant filed this appeal, challenging the termination as a layoff which did not comply with CSR Rule 14.

At the time Appellant accepted the demotion to Workforce Development Advisor, she believed that it was a demotion in lieu of layoff. [Testimony of Appellant; Exh. 9.] Appellant made the decision to accept the demotion based upon the Agency's agreement to allow her pay to remain the same. CSA approved the Agency's recommendation that Appellant would be paid at Step 18 in the new position in order to match her Step 8 pay in the position having a higher classification. [Exh. 8.] Appellant further believed that she would have layoff protection in the new position, and testified that she would have explored other options first if she had been advised that the rules would be interpreted to exclude her from layoff protection.

### **III. ANALYSIS**

Under the Career Service Rules, a limited position is one having a specified ending date. CSR § 5-32 B. An employee in a limited position who successfully completes probation attains Career Service status. CSR § 5-42 B. A career service employee "is entitled to lay-off protection specified in Rule 14 SEPARATIONS OTHER THAN DISMISSAL except for employees appointed to limited positions after January 16, 2004." CSR § 5-62 5).

A layoff is defined as "[t]he separation of a Career Status, unlimited employee or a limited employee appointed prior to January 16, 2004 from the Career Service resulting from the abolishment of a position." CSR § 14-41. Layoffs are determined by an appointing authority's selection of positions to be abolished by class within an approved layoff unit, followed by approval of the layoff plan by the Career Service Authority. An employee approved for layoff is entitled to thirty days' notice before the effective date of a layoff. CSR §§ 14-42, 14-46.

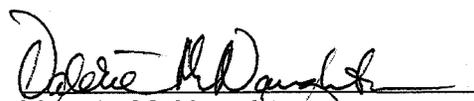
There was no evidence submitted by either party that the separation of Appellant was treated as a layoff under the Rules. The 2006 personnel action form showed the action as a termination coded as "OTH" ("other"), although the typed words "ETR end of training assignment" were crossed out by hand. [Exh. 7.] Appellant argues that she was entitled to layoff protection because her 2005 demotion had the typed words "In Lieu of Layoff" crossed out by hand. However, even if the earlier demotion was considered to be in lieu of layoff, that would not convert this termination from an end of assignment into a layoff.

The evidence is clear that Appellant's separation was caused by the Agency's decision not to extend her appointment beyond its stated end date, which was June 30, 2006. Since Appellant's separation was not a layoff, it is not necessary to this decision to resolve the sole remaining contested issue in this appeal, which is whether Appellant's 2005 demotion changed Appellant's date of appointment to her position for purposes of determining her right to layoff protection under CSR § 5-62 5). However, in order to assure complete findings of fact, it is noted that a Career Service demotion appointment "moves an employee from a position in one classification to a different position in a different classification". CSR § 5-72 E., emphasis added. It is undisputed that the essential duties of Appellant's demotional appointment were very different than those of her original position. As an Analyst Specialist, Appellant monitored contracts the Division had with partnering service providers. In contrast, Appellant worked directly with low income families to help them obtain temporary financial assistance in her Workforce Development Advisor position. Therefore, Appellant was appointed to the position affected by her separation on July 1, 2005, and was not protected from layoff under CSR § 5-62 5).

### ORDER

The Agency's termination action effective July 1, 2006 is hereby AFFIRMED.

Dated this 30<sup>th</sup> day of November, 2006.

  
Valerie McNaughton  
Career Service Hearing Officer

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