

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

Appeal No. 210-02

ORDER OF DISMISSAL

IN THE MATTER OF THE APPEAL OF:

JOYCE MONTABON, Appellant.

Agency: Department of Revenue, Treasury Division, and the City and
County of Denver, a municipal corporation.

PROCEDURAL HISTORY

This matter comes before the undersigned Hearing Officer on the Agency's motions to Dismiss And Delay Filing of Pre-Hearing Statements and for En Banc Determination of Agency's Motion to Dismiss. Appellant responded to both motions and the Hearing Officer has considered all the pleadings filed in this case.

Having reviewed all the pleadings in the Hearings Office file on Case No. 210-02, the undersigned Hearing Officer concludes that this appeal must be **DISMISSED** for the following reasons:

DISCUSSION and CONCLUSIONS OF LAW

1. Authority to hear grievance claims of harassment or discrimination.

Appellant seeks redress, through grievance and appeal, of alleged acts of sexual harassment and discrimination based on sex and disability. She lists CSR 15-100 and 5-84 as the Career Service Rules (CSR) violated by her supervisor and the Agency.

A. Sexual Harassment claim: The Hearing Officer has specific authority, under CSR 19-10 f), to hear "Harassment or discrimination" cases and the title of subsection 10 f) suggests that this granting of authority is to be read in conjunction with appeals filed under CSR 15-100 *et seq.* CSR 19-10 f) provides: "Harassment or discrimination: The *disposition* by a supervisor or other appropriate official of a complaint of harassment or discrimination may be appealed if such disposition has not resulted in stopping the prohibited behavior." (Emphasis added.) The Hearing Officer concludes that, where a claim of discrimination is made pursuant to any part of CSR

15-100 through 15-106, there is authority for the Hearing Officer to hear such claim only where there is a "disposition by a supervisor or other appropriate official of a complaint of harassment or discrimination".

In her appeal, Appellant alleges violations of CSR 15-100 but does not indicate if or when she received the administrative disposition necessary to create jurisdiction under CSR 19-10 f). However, in its Motion to Dismiss, the Agency argues that Appellant reported and sought an investigation of her claim of harassment. The Agency's Exhibit A, attached to its Motion to Dismiss, indicates that Appellant's request for an investigation was denied by letter dated December 12, 2002. The Hearing Officer concludes that Appellant's appeal of the administrative disposition of her claim of harassment, under CSR 15-100, was required to be filed on or before December 22, 2002. (See CSR 19-22.) The instant Appeal was filed on December 30, 2002. Therefore, the Hearing Officer does not have authority to hear Appellant's harassment claims because her appeal of such claims was not timely filed.

B. Discrimination based on sex and disability: Discrimination claims under CSR 19-10 c) are typically brought as a challenge to some underlying employment action such as a disciplinary action, failure to make reasonable accommodations, failure to hire or promote, etc. However, Appellant does not indicate that her appeal of alleged discriminatory actions is pursuant to CSR 19-10 c). Rather, it seems she relies upon CSR 15-100 as the authority for her discrimination claims and, in that case, due to the untimely filing of her appeal (as indicated above, paragraph A), the Hearing Officer does not have authority to hear Appellant's discrimination claims.¹

Additionally, in cases where the underlying action must first be grieved, it is appropriate to raise the discrimination claim during the grievance process. In this case, the underlying action appealed by Appellant is the issuance of a Memorandum (Memo) from Appellant's supervisor, entitled "Core Work Hours and Work Functions", dated November 29, 2002. Appellant's grievance (copy attached to the appeal) addresses the Memo but does not allege discrimination. Therefore, the Hearing Officer concludes that Appellant's claims of discrimination were brought pursuant to CSR 15-100 and, due to untimely filing of her appeal (as indicated above, paragraph A), the Hearing Officer does not have authority to hear Appellant's discrimination claims.

C. Reasonable accommodations and remedies sought: Appellant also lists CSR 5-84 as a Career Service Rule violated by her supervisor and the Agency, and seeks the following remedies: 1) "cease different treatment" based on disability, 2) "cease behaviors" that block Appellant's normal movement, stretching or interfere with essential duties and medical recovery, 3) "cease interpreting" doctor's or therapist's written or verbal orders, 4) "allow me to perform as much of my essential duties as I

¹ If it was Appellant's intent to file her discrimination claims as a direct appeal pursuant to CSR 19-10 c), rather than CSR 15-100, then her appeal must be dismissed as untimely filed. In that circumstance, her appeal was due on December 9, 2003, 10 days after the issuance of the Memo.

can without adverse affects”, and 5) “cease behaviors that adversely affect my medical recovery.”

CSR 5-84 states: “It is the policy of the Career Service Authority to provide equal employment opportunity to individuals with disabilities.” The rule addresses Disability Discrimination, Reasonable Accommodation and the Interactive Process. Presumably, Appellant seeks to appeal the issuance of the November 29, 2002 Memo as an act of Disability Discrimination or failure to provide Reasonable Accommodation or, perhaps, she seeks to appeal the disposition of the Interactive Process. If this appeal is pursuant to any part of CSR 5 - 84, it must be dismissed as untimely filed. That is, a direct appeal pursuant to CSR 5 - 84 was due on December 9, 2003, 10 days after the issuance of the Memo. Additionally, if Appellant seeks to appeal the disposition of the Interactive Process, her appeal must be dismissed as untimely filed because the letter of disposition is dated December 9, 2003. (See Agencies’ Motion to Dismiss, Exhibit B.) Therefore, an appeal pursuant to CSR 5-84 was due on December 19, 2003. The instant appeal was filed December 30, 2002. The Hearing Officer does not have the authority to hear Appellant’s claims pursuant to CSR 5-84 because such direct appeal was not timely filed.

2. Agency’s request for *En Banc* hearing:

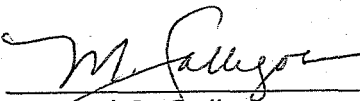
By motion, the Agency requestes an *En Banc* determination of the Agencies’ Motions to Dismiss in three separate appeals including the instant case. Because this matter is here dismissed the Agency’s request for an *En Banc* determination is moot.

ORDER

1. The Agency’s request for an *En Banc* determination of the Agencies’ Motions to Dismiss is dismissed as moot.

2. Appellant’s harassment and discrimination claims are dismissed for lack of jurisdiction in that Appellant failed to timely file an appeal of the administrative disposition of her claims under CSR 15-100 and failed to timely file a direct appeal under CSR 5-84. WHEREFORE, this appeal is DISMISSED.

Dated this 6th day of November, 2003.



Michael S. Gallegos
Hearing Officer for the
Career Service Board