

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

Appeal No. 75-09 A.

FINDINGS AND ORDER FOLLOWING REMAND

IN THE MATTER OF THE APPEAL OF:

ANGELICA PETTWAY,

Appellant/Petitioner,

vs.

DEPARTMENT OF FINANCE, ASSESSMENT DIVISION, and the City and County of
Denver,

Agency/Respondent.

This matter is before the Career Service Board on Appellant's Petition for Review following remand. After considering all the evidence in the record, the Board **AFFIRMS** the Hearing Officer's Decision dated May 9, 2011, on the grounds outlined below.

I. BACKGROUND

In 2009, the Agency determined that a layoff was necessary in order to meet reductions in its fiscal budget. Three of six Assessment Information Technician (AIT) positions were to be eliminated and City Assessor Paul Jacobs decided to use proficiency rankings as the criteria for selecting which three AITs would be laid off. Following an evaluation period, the Agency determined that Appellant ranked 4 out of 6 AITs and was therefore selected for layoff.

During the first career service hearing, the Agency introduced into evidence Exhibits 47, 48, and 49. Exhibits 47 and 48 were summary documents prepared by Mr. Jacobs from backup documentation contained in Exhibit 49. These documents showed the production rates and final proficiency rankings of all six AITs. After the hearing had concluded, the Hearing Officer found errors in the Agency's exhibits. She then calculated her own production rates, using a simple averaging method in which she divided the total number of tasks each employee completed in five months by the total time spent on each task to arrive at an average work product per hour. The Hearing Officer's production rates were slightly different from the Agency's production rates.

Based on her own calculations, the Hearing Officer determined that Appellant should have been ranked 3 instead of 4, and because she could not reproduce the Agency's calculations, the Hearing Officer concluded that Appellant's layoff was arbitrary and capricious.

On appeal, the Board also had difficulty understanding the Agency's summary documents. However, after taking a second look at the evidence, the Board was able to reproduce the Agency's production rates by averaging the daily production rates to obtain a monthly average and then averaging the monthly averages. Whether the Board's methodology was the methodology used by the Agency was unclear as no testimony had been introduced during the hearing that explained how the Agency had arrived at its final rankings. In addition, the Board, like the Hearing Officer, observed that there were unexplained errors in the Agency's exhibits. We therefore reached the following conclusions:

Based on the evidence in the record, we cannot determine whether the Agency's actions in this layoff were in fact reasonable and fair, or arbitrary and capricious. Nor can we determine whether any errors in the Agency's exhibits would change the production rates or final rankings. We therefore remand this case to the Hearing Officer to make these determinations, consistent with our findings.

CSB Findings and Order, October 21, 2010.

Following a remand hearing, the Hearing Officer determined that the proficiency standards used by the Agency were reasonable and fair and that Appellant's layoff was not arbitrary and capricious.

II. FINDINGS

Appellant argues that the Hearing Officer exceeded the limited scope of the remand hearing by allowing Mr. Jacobs to testify about the methodology he used in calculating production rates. We disagree. The fact that the Board was able to reproduce Mr. Jacobs' numbers by using a daily/monthly averaging does not mean that this was the Agency's methodology. Mr. Jacobs testified that there are many different ways to calculate production rates and the methodology he used, which is detailed in the Hearing Officer's decision, was not the methodology used by either the Hearing Officer or the Board. Additionally, Mr. Jacobs was able to demonstrate how transcription errors in the original exhibits did not change his calculations of production rates or final rankings. The Hearing Officer carefully adhered to the Board's instructions regarding the scope of the remand hearing.

Next, Appellant contends that the Board did not have jurisdiction to order a remand following the first hearing. Again, we disagree. The central issue presented in the Agency's appeal was whether there was sufficient evidence in the record to support

the Hearing Officer's ultimate conclusion that the layoff was arbitrary and capricious. The Board had jurisdiction to hear the Agency's appeal under CSR 19-61 D.

And finally, Appellant suggests that the Board's decision to order a remand hearing "based on the fact that the Agency failed to present the evidence necessary to substantiate its proficiency rankings sets poor precedent for the Career Service Authority." Opening Brief, p. 14. Here, Appellant misconstrues the reasons for the remand. While it is true the Agency did not elicit testimony explaining how it arrived at its final rankings, Appellant also failed to elicit such testimony and she bore the burden of proving that the Agency's rankings were arbitrary and capricious. Thus, neither party introduced the very evidence that was crucial to determining whether the layoff was fair and reasonable or arbitrary and capricious. The purpose of the remand hearing was to give the Agency the opportunity to explain its calculations and to give Appellant the opportunity to show any flaws, errors, inconsistencies or unfairness in the manner or method by which the Agency calculated its proficiency rankings.

The Hearing Officer's findings and conclusions on remand are supported by the evidence in the record and are not clearly erroneous.

III. ORDER

IT IS THEREFORE ORDERED that the Hearing Officer's Decision of May 9, 2011, is **AFFIRMED**.

SO ORDERED by the Board on October 20, 2011, and documented this
3rd day of November, 2011.

BY THE BOARD:



Co-Chair

Board Members Concurring: Patti Klinge, Colleen M. Rea, Nita Henry and Amy Mueller.

CERTIFICATE OF DELIVERY

I certify that I delivered a copy of the foregoing **Findings and Order Following Remand** on November 4, 2011, in the manner indicated below, to the following:

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