

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

Appeal No: 25-07

ORDER DISMISSING APPEAL

IN THE MATTER OF THE APPEAL OF:

GLENN SAMPLE,
Appellant

vs.

DEPARTMENT OF HUMAN SERVICES,
and the City and County of Denver, a municipal corporation,
Agency.

Appellant was previously ordered to show cause why this appeal should not be dismissed for lack of jurisdiction. Appellant filed a timely response on May 29, 2007. The Agency did not file a response. Upon consideration of Appellant's response and submissions, the following findings and order are entered:

This is an appeal of a failure to pass promotional probation for the position of Staff Social Case Worker. Appellant claims jurisdiction is present under CSR § 19-10 A. 3, apparently arguing that the Agency's decision that he did not pass probation should be considered an involuntary demotion with attendant loss of pay. Appellant also appeals on the bases of discrimination, harassment, and retaliation. Appellant requests that a verbal warning issued May 17, 2007 be rescinded, and that the Agency offer him the position of Special Education Teacher.

The Hearing Office is an administrative forum that hears only actions defined by the rules under which it operates. In re Lovin, CSA 27-06, 2 (5/18/06); CSR § 19-10. An "involuntary demotion with an attendant loss of pay" can be directly appealed. CSR § 19-10 A. 3. However, Appellant is challenging his return to the position of Youth Worker, which is the position from which he was promoted. The rules specify that a return from promotional probation may not be appealed except for alleged discrimination. CSR §§ 5-63; 5-74 d) 1. Probation is intended as "an integral part of the examination process and shall be utilized for closely observing the employee's work . . . and to separate or demote, or return from promotional probation an employee whose performance does not meet required standards". CSR § 5-51. Therefore, the decision to end probation is

not equivalent to an involuntary demotion under CSR § 19-10 A. 3., and may not be directly appealed.

Although Appellant has alleged discrimination, neither the appeal nor the response to the Order to Show Cause included an Agency response to Appellant's May 18, 2007 complaint of discrimination, harassment, and retaliation. [Appeal attachments, pp. 8 – 11.] Moreover, the appeal and response do not specify the protected basis alleged for discrimination or harassment. The complaint alleges only that Appellant believes his denial of the Special Education position was discriminatory, but fails to allege that the employee who received that position has a different protected status from his own, or any other facts from which discrimination could be inferred. [Appeal attachments, p. 11.] Finally, neither submission identifies the nature of the protected activity taken by Appellant that is needed to support a retaliation claim. CSR § 15-106. The Order to Show Cause requires that the response include a showing as to each of these matters.

Appellant's remaining arguments are not well founded. A verbal warning is not appealable. CSR § 16-73 D. 1. A hearing officer has no authority to order an appointing authority to pass an employee in promotional probation or to extend an offer of employment. CSR § 19-55.

ORDER

For the reasons stated above, the following orders are entered herein:

1. The direct appeal of the return from promotional probation is dismissed for lack of jurisdiction,
2. The discrimination appeal is dismissed without prejudice to a right to refile in the event Appellant complies with CSR § 19-10 B. 1., and
3. The appeals of the verbal warning and denial of the Special Education position are dismissed for lack of jurisdiction.

DONE this 7th day of June, 2007.


Valerie McNaughton
Career Service Hearing Officer