

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

Appeal No. 143-05

ORDER DISMISSING APPEAL

IN THE MATTER OF THE APPEAL OF:

DIANE M. VAN DYCK, Appellant,

vs.

DENVER INTERNATIONAL AIRPORT, DEPARTMENT OF AVIATION,
Agency, and the City and County of Denver, a municipal corporation.

The Agency filed its Motion to Dismiss on January 31, 2006, in which it asserts five claims in favor of dismissal. The Appellant filed her response on February 14, 2006. Having considered the parties' Motion and Response, and being otherwise informed in this matter, the Hearings Officer finds and orders as follows.

The following principles apply to an agency motion to dismiss prior to hearing: statements in the Appeal must be viewed in the light most favorable to the Appellant; all Appellant's assertions of material facts must be accepted as true; and the Motion to Dismiss must be denied unless it appears beyond doubt that the Appellant cannot prove that the facts, as she alleges them, would entitle her to relief. Dorman v. Petrol Aspen, Inc., 914 P.2d 909, 911 (Colo. 1996), In re Martinez, CSA 176-03 (6/28/04). Each of the Agency's claims is considered in the order alleged.

I. Request for transfer.

For her remedies, the Appellant has asked "to be transferred." The Hearings Officer agrees with the Agency, that he is not empowered to grant such relief under the Career Service Rules, City Charter, City Ordinances, or otherwise.

II. Request for compensation under CSR 7-80.

The Appellant next requests to be "compensated for the time I performed the duties of a 'Contract Administrator' while she was paid at her current classification. The Agency argues she failed to assert her claim under the proper Career Service Rule, (CSR), 7-80 which addresses working out of class. The Hearings Officer will not require a *pro se* Appellant to assert each claim with precision, as long as she states a claim for which relief may be granted within the Hearings Officer's jurisdiction. The Agency may

file a Motion for More Particular Statement, or may request discovery if an appeal fails to state a claim sufficiently to prepare a response.

Nonetheless, even taking the Appellant's claim in the light most favorable to her, she would not be entitled to relief. The Hearings Officer agrees with the Agency, that the Appellant's claim appears to request relief under CSR 7-80. That rule states, in pertinent part, "[a]ssignments outside of the job classification can be made for up to thirty (30) consecutive calendar days without a change to pay status of the affected employee." CSR 7-80 A. The Appellant appears to claim a right to out-of-classification pay for work performed October 5-10, 2005. See Appeal, Grievance Form attachment. As the rule does not contemplate additional pay for less than thirty days outside the classification, the Appellant failed to make a prima facie claim under CSR 7-80.

III. CSR 11-34 c). The Appellant cited CSR 11-34 c), yet failed to cite any facts from which a claim is advanced under this rule.

IV. Harassment.

To establish a prima facie case of hostile work environment harassment, the Appellant must show, under the totality of the circumstances, the harassment was pervasive or severe enough to alter the terms, conditions, or privilege of employment. She must allege evidence to show that the workplace was permeated with discriminatory intimidation, ridicule, and insult sufficiently severe or pervasive to alter the conditions of her employment and create an abusive working environment. Bloomer v. UPS, 94 Fed. Appx. 820 (10th Cir., 2004). The Appellant cites the following as evidence of harassment by her supervisor, Lisa Torres: "she is unfair in her requirements...as opposed to other team members...;" "it has affected me physically;" that Torres embarrassed her in front of other team members; that Torres "began harassing me again concerning the vending agreements;" "she threatened me by stating 'you do that [call someone] and you will suffer the consequences;'" "she stated I was not doing my job;" "I requested that Ms. Torres leave at least three times before I practically had to make her leave;" and "in the past I have allowed Ms. Torres to behave unfairly toward me." Even in the light most favorable to her, the Appellant failed to state how Torres' actions could be pervasive or severe enough to alter the terms, conditions, or privilege of the Appellant's employment.

V. Timeliness of appeal. This claim was addressed in the Hearings Officer's Order of 1/23/06.

For reasons stated above, the Appellant failed to establish a prima facie case for any of her claims. Her case is therefore DISMISSED WITH PREJUDICE.

DONE this 16TH day of February, 2006.



Bruce A. Plotkin
Hearings Officer
Career Service Board